Government of India Publications are obtainable from the Government of India Central Publication Branch, 8, Hastings Street, Calcutta, and from the following Agents:—

EUROPE.

OFFICE OF THE HIGH COMMISSIONER FOR INDIA,
42, GROSVENOR GARDENS, LONDON, S.W. 1.
And at all Booksellers.

INDIA AND CEYLON.

Provincial Book Depots:

MADRAS:—Office of the Superintendent, Government Press, Mount Road, Madras.
BOMBAY:—Office of the Superintendent of Printing and Stationery, Poona.
SIND:—Library attached to the Office of the Commissioner in Sind, Karachi.
BENGAL:—Office of the Bengal Secretariat Book Depôt, Writers' Buildings, Room No. 1, Ground Floor, Calcutta.
UNITED PROVINCES OF AGRA AND OUDH:—Office of the Superintendent of Government Press, United Provinces of Agra and Oudh, Allahabad.
PUNJAB:—Office of the Superintendent, Government Printing, Punjab, Lahore.
BURMA:—Office of the Superintendent, Government Printing, Burma, Rangoon.
CENTRAL PROVINCES AND BERAR:—Office of the Central Provinces Secretariat, Nagpur.
ASSAM:—Office of the Superintendent, Assam Secretariat Press.
BIHAR AND ORISSA:—Office of the Superintendent, Government Printing, Bihar and Orissa, P.O. Gulzarbagh, Patna.
COORG:—Office of the Chief Commissioner of Coorg, Bangalore.
NORTH-WEST FRONTIER PROVINCE:—Office of the Manager, Government Printing and Stationery, Peshawar.

Thacker, Spink & Co., Calcutta and Simla.
W. Newman & Co., Ltd., Calcutta.
R. Cambray & Co., Calcutta.
S. K. Lahiri & Co., Calcutta.
The Indian School Supply Depôt, 309, Bow Bazaar St. Calcutta & 226, Nawabpur, Dacca.
Butterworth & Co. (India), Ltd., Calcutta.
Rai M. C. Sarcar Bahadur & Sons, 90-2A, Harrison Road, Calcutta.
The Weldon Library, 17, Park Street, Calcutta.
Standard Literature Company, Ltd., Calcutta.
Association Press, Calcutta.
Chukervertty, Chatterjee & Co., Ltd., 13, College Square, Calcutta.
The Book Company, Calcutta.
Higginbothams, Ltd., Madras.
V. Kalyanarama Ayyar & Co., Madras.
P. R. Rama Ayyar & Co., Madras.
Rochouse & Sons, Madras.
Bright & Co., Trivandrum.
V. S. Swaminathan, Bookseller, West Tower Street, Madura.
Thacker & Co., Ltd., Bombay.
D. B. Taraporevala, Sons & Co., Bombay.
Sunder Pandurang, Bombay.
Ram Chandra Govind & Sons, Kalbadevi, Bombay.
N. M. Tripathi & Co., Booksellers, Princess Street, Kalbadevi Road, Bombay.
Proprietor, New Kitabkhana, Poona.
The Manager, Oriental Book Supplying Agency, 15, Shukrawar, Poona City.
R. S. Gondhalekar's Book Depôt, Publisher and Bookseller, Budhwar Chawk, Poona City.
Managing Director, Co-operative Bookstall, Booksellers and Publishers, Poona City.
The Standard Bookstall, Karachi, Rawalpindi, Murree, Lahore, Peshawar and Quetta.
Karsandas Narandas & Son, Surat.
A. H. Wheeler & Co., Allahabad, Calcutta and Bombay.
Manguldas & Sons, Booksellers and Publishers, Bhaga Talao, Surat.
Mrs. Radhabhai Atmaram Sagoon, Bombay.
N. B. Mathur, Superintendent, Nazir Kanun Hind Press, Allahabad.
The North India Christian Tract and Book Society, 18, Clive Road, Allahabad.
Ram Dayal Agarwalla, 184, Katra, Allahabad.
Manager, Newal Kishore Press, Lucknow.
The Upper India Publishing House, Ltd., 41, Aminabad Park, Lucknow.
Munshi Seeta Ram, Managing Proprietor, Indian Army Book Depôt, Juhi, Cawnpore.
Rai Sahib M. Gulab Singh & Sons, Mufid-i-Am Press, Lahore and Allahabad.
Rama Krishna & Sons, Booksellers, Anarkali, Lahore.
Puri Brothers, Booksellers and Publishers, Katcheri Road, Lahore.
The Tilak School Book Shop, Lahore.
Manager of the Imperial Book Depôt, 63, Chandni Chawk Street, Delhi.
Oxford Book and Stationery Company, Delhi.
Superintendent, American Baptist Mission Press, Rangoon.
Proprietor, Rangoon Times Press, Rangoon.
The Modern Publishing House, Ltd., 30, Phayre Street, Rangoon.
The International Buddhist Book Depôt, Post Box No. 971, Rangoon.
Burma Book Club, Ltd., Rangoon.
Manager, the "Hitavada," Nagpur.
S. C. Talukdar, Proprietor, Students & Co., Cooch Behar.
Times of Ceylon Co., Ltd., Ceylon.
The Manager, Ceylon Observer, Colombo.
The Manager, The Indian Book Shop, Benares City.
B. C. Basak, Esq., Proprietor, Albert Library, Dacca.
The Srivilliputtur Co-operative Trading Union, Ltd., Srivilliputtur (Sattur, S.I.R.).
Banwari Lal, Esq., Pakariya Street, Pilibhit, United Provinces.
G. A. Natesan & Co., Georgetown, Madras.
Manager, Standard Book Depot, Lahore, Dalhousie, Ambala Cantonment, Nainital and Mussoorie.
The Booklovers Resort, Taikad, Trivandrum, South India.
J. Roy & Sons, Rawalpindi.

CONTENTS

APPENDIX V.

APPENDIX VI.

APPENDIX VII.

APPENDIX VIII.

APPENDIX IX.

APPENDIX X.

A NOTE BY THE LEGAL ADVISER TO THE COMMITTEE ON THE DUTIES LEVIED UNDER THE INDIAN STAMP ACT.

Introductory.

General considerations influencing the rates of stamp duty.

Detailed consideration of the Schedule.

Transactions on the Stock and Produce Exchanges.

PAGE

Annexure A.

Annexure B.

Annexure C.

Annexure D.

APPENDIX XIII.

A NOTE ON TAXES ON CONSUMPTION FOR LOCAL PURPOSES.

Introductory.

PAGE

The Octroi and Terminal tax.

Taxation of sales.

APPENDIX I

The terms of reference to the Committee with subsequent interpretations and modifications thereof.

Resolution of the Government of India, Finance Department (Accounts and Finance—Miscellaneous), No. 1412-F., dated Simla, the 26th May 1924.

The question of instituting a scientific enquiry into the system of Indian taxation has recently attracted considerable attention in this country and has been discussed on more than one occasion in the Indian Legislature. The Government of India are now in a position to announce that arrangements have been completed for such an enquiry.

2. The motive for the appointment of the Committee is not any need for meeting additional expenditure or any intention to increase the total amount raised by taxation in India. The necessity for the enquiry arises largely from the effect produced by the War on the general level of prices and of expenditure and consequently on the incidence of taxation in its existing forms. The problems arising therefrom are common to many countries, but in India the changes which have been made since the War in the relations between the Central and the Provincial Governments, and the development of self-government furnish special reasons for a study of the subject of taxation in general and for the examination of alternative sources from which to raise the money to meet the expenditure which has necessarily to be incurred by the various taxing authorities at the present time. The increasing pressure for a more drastic regulation of the liquor traffic in particular makes the study of alternative sources of taxation imperative, while the modifications in the existing system of taxation which may be expected to result from action taken on the recommendations of the Indian Fiscal Commission and the Tariff Board, will disturb the distribution and affect the real burden of taxation borne by the people of India.

3. The intention of the Government of India to institute this enquiry was announced in the Council of State on the 4th February 1924, when the proposal was discussed in some detail. Reasons were then given for the opinion of the Government of India that the terms of reference should be comprehensive and that the enquiry should be conducted by a small committee, equally representative of European and Indian experience, and including an officer with wide knowledge of Indian administration, an Indian representative of acknowledged authority in economic questions and an expert on taxation from abroad.

4. Sir Charles Todhunter, K.C.S.I., I.C.S., till recently Finance Member of the Executive Council of the Governor of Madras, has agreed to act as Chairman of the Committee. The Government of India have also been able to secure the services of Sir Percy Thompson, K.B.E., Deputy Chairman of the Board of Inland Revenue in England. The following gentlemen have also consented to serve on the Committee:—Sir Bijay Chand Mahtab, G.C.I.E., K.C.S.I., I.O.M., Maharajadhiraja Bahadur of Burdwan, and Dr. R. P. Paranjpye, Professor, Fergusson College, Poona. Mr. W. B. Brett, I.C.S., will act as Secretary.*

5. The following are the terms of reference to the Committee:—

(1) To examine the manner in which the burden of taxation is distributed at present between the different classes of the population.

---

*Dr. L. K. Hyder, Professor of Economics, Aligarh University, and the Hon'ble Sardar Jogendra Singh were subsequently appointed as members of the Committee. Mr. Brett went on leave on grounds of ill-health in September 1925 and Mr. B. Rama Rau, I.C.S., who had been appointed Joint Secretary in February, succeeded to the duties of Secretary.

(2) To consider whether the whole scheme of taxation—Central, Provincial and Local—is equitable and in accordance with economic principles and, if not, in what respects it is defective.

(3) To report on the suitability of alternative sources of taxation.

(4) To advise as to the machinery required for the imposition, assessment and collection of taxes, old and new.

(5) To prepare rough estimates of the financial effects of the proposals.

(6) To include in the enquiry consideration of the land revenue only so far as is necessary for a comprehensive survey of existing conditions.

The terms of reference have been formally accepted by all the Provincial Governments without prejudice to their claims in regard to the distribution of the total revenues.

6. It will be observed that the Committee will have no concern with expenditure, nor will it be part of their function to examine the adequacy of the resources of different governing bodies. Their concern will be primarily with the burden imposed on classes of the population without regard to territorial limits. The estimates they will frame will be designed to illustrate methods of easing the burden where it is too heavy and of increasing it where it is too light. They will indicate the theoretically correct distribution of taxes between Imperial, Provincial and Local and the most efficient machinery for collection, whether it follows the same lines of division or not. It will thus be no part of the duties of the Committee to consider the equity of the Meston award.

Similarly as regards land revenue, the Committee will not be required to make suggestions regarding systems of settlement. But it will be within the scope of the enquiry to study the incidence of the land revenue (including water rates) and to point out any defects from the point of view of the canons of taxation or any difficulties in readjustment of the burden of taxation.

7. It will be written the terms of reference to the Committee to institute such an enquiry into the economic condition of the people as the Committee may consider necessary for its purpose and to report on the adequacy of the material already available, making suggestions as to the best manner in which it may be supplemented and the most suitable agency for a wider economic enquiry.

A resolution on the subject of a wider enquiry into the economic condition of the people of India was in fact moved by the Hon'ble Mr. Phiroze C. Sethna in the Council of State on the 4th February 1924, and adopted in the following form:—

> "That this Council recommends to the Governor General in Council that the Local Governments may be consulted with regard to the desirability of undertaking an inquiry into the general economic conditions of British India and whether they are prepared to support the proposal to appoint a Committee and to co-operate in its labours, if appointed."

The Government of India consider that the present enquiry is likely to provide material of much value for any enquiry which may subsequently be made into the wider aspect of the Indian economic position.

8. The Government of India have discussed the preliminaries with the Chairman, who has now left India on leave. With the object of getting as full information as possible of the systems of taxation in European countries, he is, with the concurrence of the Government of India, visiting Geneva to study European and other taxation systems, with the assistance of the Secretariat of the League of Nations. It is proposed that the Committee should assemble in India about the last week of October and in the meantime preliminary statistical material is being collected with the assistance of the Provincial Governments for the use of the Committee.

9. The Government of India hope that the enquiry may be completed within a year. The Committee will report to the Government of India, who, in consultation with the Provincial Governments, will consider the further action necessary. Opportunity will then be taken to have a full consultation with the representatives of public opinion and the legislature before any action is taken.

Extract from the Hon'ble the Finance Member's speech in the Legislative Assembly, dated 22nd September 1924, on a Resolution regarding suspension of the Taxation Enquiry Committee and substitution of a committee with wider terms of reference.

"There is one phrase in the terms of reference proposed by Mr. Jinnah, though I am afraid it is a little too late to incorporate it in the terms of reference as they have already been announced for some time, which is, I think, an improvement. I should be very glad to accept that portion. It is the part about the suitability of alternative sources of taxation 'without increasing the present level'. I should have been very glad to have thought of those words at the time. I will now have them incorporated in the instructions to the Committee, and I hope that will bring home to Honourable Members that there is no ground for this suspicion that the Government, in spite of their very definite statement to the contrary, desire this Committee with no other idea but that of increasing the total expenditure of the country or the total amount raised by taxation. They desire it for the very purpose which Mr. Joshi said, that the incidence of the existing taxation may be examined, and if it falls too heavily in one direction, it may be lightened, with the consequence probably that it would have to be increased if it falls too lightly in another direction. It is a question of expenditure whether it will have to be increased correspondingly in the other direction or not, but there is no desire whatsoever in connection with this Committee to find new sources of taxation in order to raise a larger amount by taxation. The object is readjustment. The purpose of the Committee is to reconsider our existing system of taxation and see whether it is capable of improvement, both in its incidence and in its machinery."

Resolution of the Government of India, Finance Department, No. 655-F., dated Delhi, the 22nd January 1925.

The Government of India have had under consideration the best method of giving effect to the wishes of the legislature in connection with the institution of a general economic enquiry in India. They have come to the conclusion that, before any wider enquiry can usefully be inaugurated, it is necessary to collate and examine the existing material, to ascertain how it can best be supplemented, and to determine what lines an economic enquiry into the resources of the country should take. They have accordingly decided, with the approval of the Secretary of State, to appoint immediately a small Committee for the purpose consisting of the following gentlemen, who have consented to serve on it:—

Sir M. Visvesveraya, K.C.I.E., D.SC., M.I.C.E, *Chairman.*

Rai Bahadur Pandit Hari Kishan Kaul, C.S.I., C.I.E., *Member;* and

Mr. A. R. Burnett-Hurst, B.SC., Professor, Muir Central College, Allahabad, *Member* and *Secretary.*

2. The following are the terms of reference to the Committee:—

To examine the material at present available for framing an estimate of the economic condition of the various classes of the people of British India; to report on its adequacy; and to make recommendations as to the best manner in which it may be supplemented, and as to the lines on which a general economic survey should be carried out, with an estimate of the expenditure involved in giving effect to such recommendations.

On the 29th January 1925 the following letter from the Government of India was received transferring a part of the Committee's terms of reference to the Indian Economic Enquiry Committee:—

I am directed to enclose for the information of the Indian Taxation Enquiry Committee a copy of the Resolution in this Department, No. 655-F, dated the 22nd January 1925, constituting a preliminary Economic Enquiry Committee. This Committee will meet at Delhi and commence work on the

7th February 1925. It will be observed that, under the terms of reference, both the Committees will, in certain respects, have to collect and examine the same materials and there will possibly be duplication of work. The Government of India have decided accordingly that the Indian Taxation Enquiry Committee need not concern themselves with that part of their reference which directly overlaps the functions of the Indian Economic Enquiry Committee.

On the 9th February 1925 this was supplemented by instructions "to let the question of incidence stand over until the report of the Economic Enquiry Committee on the whole question of method has been received". It was added that "the question of staff for the enquiry will then only arise after the report of the Economic Enquiry Committee has been received."

On the 18th of February the Government of India accepted the following interpretation of the terms of reference in so far as they relate to the subject of Land Revenue:—

(1) The Committee are to decide what are the canons or maxims of taxation now accepted by economists.

(2) If and in so far as these canons of taxation can be applied to the land revenue systems, they are to see how far, if at all, these systems or any of them offend against the canons in question.

(3) They are not to concern themselves with the controversy regarding the Permanent Settlement, or with the details of procedure in the making of settlements, whether permanent or temporary, such as the fixing of the class or sort of soils or commutation rates or expenses of cultivation, nor are they to enter upon questions auxiliary to the land revenue such as the tenancy laws.

(4) If, as a result of their examination of the question in the light of the above considerations, they come to the conclusion that there are defects which can be cured without radical changes in any system or systems, they are to point out the defects, and leave it to the Governments concerned to find and apply the cure.

(5) If, on the other hand, they find so great a divergence in the systems or any of them from the accepted canons of taxation that a complete change of system is necessary, it is open to them to examine the systems of land revenue applied in other parts of the world and to suggest in broad outline the general lines of revision which commend themselves to them.

On the 12th March 1925 the Government of India issued orders on the question how far it was intended by the terms of reference that the Committee should examine the question of the revision of the tariff. They laid down that it would be best for the Committee to confine their examination of customs matters to a few broad issues. The Committee could not profitably take up the detailed examination of the Tariff Schedule with a view to its complete recasting. Their work would be prolonged very considerably and the amount of detail required for a consideration, for instance, of what should be covered by the term 'machinery' is very great.

On the 22nd April, a new item was added to the terms of reference under letter of the Government of India in the Finance Department, No. D/1832-F, dated the 22nd April 1925, addressed to the Government of Bombay, from which the following is an extract:—

In reply to your letter No. 2407-D, dated the 12th April 1925, I am directed to state that a copy of the correspondence with the Government of Bombay on the above subject has been forwarded to the Indian Taxation Enquiry Committee with the following terms of reference:—

> "The operation of Devolution Rule 15 in regard to the allocation of a share of income-tax to Provincial Governments has not been quite fair to all of them and the Committee should advise on this aspect of the case."

APPENDIX II

Evidence of English and American Economists.

Written memorandum of Sir Josiah Stamp embodying extracts from the replies of Dr. Gregory and Prof. Seligman.

Qs. 1 and 2.—My general impression is that an estimate of aggregate and average *income* is possible with the data within a possible range of error of 35 per cent, but certainly not less than 25 per cent. For particular kinds of income the estimate can be much better. Criticism of the figures needs local knowledge of the methods of compilation. I think the data much less adapted for getting absolute estimates of national wealth, and I don't think in any case, such estimates would be of practical value in taxation questions.

I think the data available for judging *changes* (i.e., relatively, instead of absolute figures) to a much closer degree of accuracy.

Q. 3.—Yes.

Q. 4.—Nothing without questions of the officials.

Q. 5.—Yes, for all industries not individual and native.

Q. 6.—No; well-placed samples should suffice.

Q. 7.—Hardly any value in relation to *incidence* questions.

Q. 8.—I doubt if it is the case. I would take the best of them, frankly as samples, and ascertain the tax burden at each possible burden. The aggregates, I judge, are not attainable.

Q. 9.—Classes graded by reference to *total* income are impossible. Broad classes such as industrial wage-earners, agricultural (sole) are alone possible. An *ad hoc* study of the taxes paid by each, proceeding on theoretical lines, and testing theory by reference to marginal cases, or concomitant changes in rates and prices.

Q. 13.—Approximating to (a) if the supply is to all inhabitants of an essential, and approximating to (b) if product only sold to a *section* of voluntary purchasers; e.g., posts are (a) and tobacco would be (b): (c) is doubtful policy except for hurtful things, drugs, alcohol, etc. If the price is no greater than would exist under private competitive supply, there is no element of "taxes".

Q. 14.—I do not know enough to say.

Q. 15.—In ignorance of local feeling, *prima facie* (1).

Q. 16.—Yes, up to 50 per cent of the estimated betterment, in a tax, with option to the payer to commute into easy lump sum. Dr. Gregory's views are given below under "Land Revenue".

Professor Seligman says:

> "Owing to my almost total ignorance of both of these facts as applied to India, I feel that such advice as I can give is almost denuded of importance. But as you ask for my advice here it is.
>
> "So far as I can size up the situation, India is a densely populated country with an immense territory and a very poor and ignorant population: but with some recent progress in certain forms of industry and with considerable treasure in the hands of some local potentates and a few individuals. Again, so far as I understand it, the main arteries of railway transportation, especially for military purposes, have been fairly well provided: the need of good roads is only just beginning: the expenditures for education are absurdly small: finally, the system of revenue is that found in very backward countries.

Note.—The Questionnaire to which these memoranda are replies will be found in Volume III—Evidence.

"If then many of the municipal services and the roads are taken care of by non-tax revenues, there remain only general administrative expenditures, the army expenditures, and the educational expenditures, as those of real importance."

Q. 18.—I should have thought so, unless an enormous profit is made over costs and interest.

Q. 19.—If raised by charges on individuals who do not necessarily benefit by the expenditure, they are taxes and must be brought in. I should classify roughly by the connection between tax payment and services received for the individual.

Qs. 21 and 22.—The distinction is absurd. If I can drink beer only at the price of a tax, it is still a 'compulsory' tax though beer drinking is voluntary. It must be estimated as a burden according to average social consumption and views as to *necessity* for consumption.

Dr. Gregory says:

"I dissent from the view expressed in Q. 21 that because a tax is voluntary, therefore it can be excluded in estimating the burden upon the tax-payer. It is true that in the case of consumption taxes, the actual quantities bought must be 'worth' their price to the consumer, otherwise he would not pay that price. The burden is measured by the difference in amount of consumption with the tax and what would have been that consumption without it. If the demand for the commodity is regarded as quite inelastic, there is still a burden, represented by the difference in the consumption of other things made necessary in view of the tax. In the case of an income-tax, there is less left to spend: in the case of a consumption tax or system of consumption taxes, what is spent brings in less. An income-tax interferes less with the equi-marginal distribution of the economic sacrifice, but that is all. But I would agree that the consciousness of sacrifice is less with an indirect tax than with a direct tax.

"The fact that a tax can be avoided by not consuming the taxed commodity does not do away with the problem of sacrifice or burden, even if the taxed commodity is not consumed. If a toll is imposed on a bridge which represents the shortest route between two places, it can be avoided by not using it, but the fact that people choose to go the longer way round only proves that that is a small sacrifice to make, not that it is no sacrifice at all. Moreover, the whole idea of consumption taxes as means of raising revenue is based on the idea that taxes will not be avoided by voluntary abstention. If demand were absolutely elastic, no doubt the result would be that people would avoid the tax, but then there would be no revenue.

"I differentiate a tax on entertainments from a tax on railway tickets (Q. 24) as legitimate methods by which revenue can be raised by the criterion that a tax on travel is undesirable because it impedes production by interfering with the mobility of labour, whilst a tax on entertainments is a tax on a (probably inelastic) luxury. Of course, some travel is luxurious: but on the whole is a desirable form of luxury. So are some forms of entertainment, but if it is desired to exempt these, it can very easily be done. It is impossible to differentiate between one kind of journey or another in practice."

Q. 23.—I should say the economic burden it imposes is different in kind from an income-tax because of its avoidability by the alteration of direction of demand.

Q. 24.—Railway—mostly an economic burden. Entertainments—partly an economic burden.

Q. 25.—Yes.

Q. 26.—I agree generally with the reply given by Dr. Gregory below. My views as to the adequacy of Adam Smith's canons for the practice of to-day are elaborated in "Fundamental Principles"—

"I write as an economist who has not made Public Finance an object of special study, except possibly as regards the Tariff issue. Of the issues raised in this questionnaire, obviously the most general is that implied in Q. 26, and I will begin with that.

"The celebrated canons of Adam Smith can be so construed as to cover the great body of modern teaching on the subject of taxation. No one would deny that it is desirable that taxes should be convenient, equitable, economical or certain. The difference is only that the discovery of the theory of diminishing marginal utility has made modern economists emphasise the virtues of progression and led them therefore to extol the income-tax, and the inheritance taxes as a form of deferred income-tax.

"To my mind, what needs stressing in these days is not so much equity as economy, in the sense that reaction of taxation on productive efficiency is constantly being neglected in the effort to attain 'marginal' equality of sacrifice. Even from this point of view the income-tax is, other things equal, a good tax—possibly the best that can be had; since it does not divert effort into any particular direction or away from any particular direction; nor can it be directly shifted, nor is it at all clear that the elasticity of supply of effort is so great as to cause a rise in income-tax to be proportionately discouraging in effect. For these reasons I believe that modern economic science, starting from the standpoint of consumption rather than production, has arrived at conclusions which, as it happens, subserve the ends of production as well as those of consumptive equality. But, nevertheless, the point to emphasise at the present day is the influence of taxation on production.

"The income-tax is a good tax, other things equal. But they are not always equal. The first and most obvious difficulty is that cost of collection rises greatly when the income to be taxed is small, and this is to my mind an almost fatal objection to over-reliance on income-tax in a country like India where the modal income is small.

"Apart from this, I think insufficient weight is given in modern economic theory to the objection that the *psychological* burden (though not the economic burden in the sense of loss of material welfare) is greater with an income-tax than with an indirect tax yielding the same net revenue.

"Though I would say that modern economists rather neglect the reaction on production of *particular* taxes, I think also that in modern discussions of taxation one ought to get away from the 'classical' standpoint that taxation as a whole is so much lost to the community. In other words, I have much sympathy with the point of view that State expenditure *may* produce as 'real' benefits as would have accrued if 'the money had been left to fructify in the pockets of the people'. In other words, the problem of taxation, as I see it, is mainly a question of whether a given tax or system of taxes is better or worse than another tax or system of taxes, producing the same net revenue. It is not much use discussing 'taxation' against 'no taxation': it is clear enough that if there were no taxes at all, and no State expenditure financed out of taxes, the national dividend would be much smaller than it actually is. In other words, the general problems of public finance are two in number—

(1) The choice between two possible expenditures, one State, the other private. I think we ought to abandon the view that 'naturally' we ought to prefer the latter to the former.

"(2) The choice between particular taxes or tax systems.

"These two sets of problems are connected. The amount the State ought to spend must be influenced by the fact that as it spends more and more, it may have to adopt more and more taxes: and again, the question of whether given taxes are good or bad cannot be finally decided until we have decided the relative urgency of more State expenditure as compared with more private expenditure.

"Economists and social reformers are apt to overlook the reaction on production: business men and producers are apt to forget the beneficial effects of State expenditure. General principles are not likely to carry one very far, in any case, but that is no reason for not letting them carry one as far as they can."

I agree particularly that there comes a point where pure justice by progression in taxation conflicts with maximum social advantage in capital accumulation or most efficient forms of production.

Q. 27.—Not necessarily. But while a minimum efficiency income bars a direct tax, or indirect tax on absolute necessities, it allows of indirect taxes on beer, tobacco, etc., which search out those parts of incomes which though theoretically below the efficiency *minimum*, are *in fact not spent* along purely efficiency lines. Dr. Gregory says:

"The trouble lies not with the principle but with its application. *Once it is decided to tax every one*: it makes no difference *from the point of view of efficiency* whether direct or indirect taxes are chosen. For indirect taxes by raising prices check consumption, and income-taxes, by reducing incomes, check consumption also. There is no evidence that an income-tax would reduce consumption in directions not making for efficiency more than an indirect tax on those directions, probably it would check it less. Hence, *once it is decided that all should pay*, the choice of taxation is, *directly* a matter of minor importance.

"But if it is decided that some should *not* pay, the question of what taxes should be chosen becomes at once very important because if indirect taxes are imposed, and those are, in part, levied on articles which do subserve efficiency, they react badly upon production. An income-tax possesses great advantages in this respect. And in general, if indirect taxation is imposed on articles the consumption of which is necessary (e.g., salt), it should be lower than on articles of consumption which are luxuries, in the sense of not ministering, in any direct way, to efficiency.

"I, therefore, prefer a poll tax to taxation of necessaries, for a poll tax can be waived in cases where no margin above subsistence level is available. Where (1) the *average* income is small, (2) the *modal* or *typical* income is small also, the objection that poll taxes as such are degressive ceases to have much weight. I consider a poll tax under Indian circumstances preferable to all the taxes mentioned in Q. 32 with the (doubtful) exception of the customs and excise duties on cotton."

Qs. 28 and 29.—There is no absolute logical connection, but there is a strong psychological bond between the two which has political value. This bond can best be developed by direct taxes, if other objections do not outweigh. Dr. Gregory says:

"I see no necessary connection between taxation and representation. Representation is a method of securing, or helping to secure, good government: taxation is a method of paying for the common expenses of the community. Those who pay taxes may have good ground for demanding representation, for otherwise it may be impossible to achieve good government: but it does not follow that good government will result if those who do not pay taxes are unrepresented. Those should pay who can, those should vote who are fit, and these two categories overlap but do not coincide."

Q. 30.—A light poll tax seems not unsuitable to Indian conditions.

Q. 33.—A steepening of the progression from 1,000 to 50,000 is desirable. At this point I may bring in Professor Seligman's views—

"The general administrative and military expenses are, I imagine, met at present out of a fairly well-balanced budget and do not require any very great changes. But education is in a different position. Findlay Shirras tells me that there are only 7-1/10 per cent literate in India. You ought to be ashamed of yourselves for such a showing. There is no use crying over spilt milk. The question is what to do in the future.

"Education is partly a local and partly a central matter. To the extent that it is a local matter and to the extent that more local land revenue cannot be set free by the abovementioned principle of special assessments, there seem to be only two solutions, either to have the Central Government divide the yield of some of its revenues with the Local Government, or, secondly, to turn over to the Central Government more of the support of the local schools very much as in New York State, let us say, the increased salaries of teachers is a State charge whereas the old normal salary and the upkeep of the schools constitute a local charge.

"Either of these plans presupposes, however, a greater central revenue, and the question arises where this is to be found. My first query is, can anything be done with the tariff and can you get a higher revenue there? That you can answer better than I. In the second place, can anything be done by graduating the income-tax? Is there enough surplus wealth in certain sections of the community to make this feasible? If so, and if it is administratively possible, it ought to be done. In the third place, have you considered the advisability of a business tax administered by the Central Government in addition to the income-tax? I know that the theory of the Indian tax is like that of the English tax, the theory, erroneous in my opinion, that by taxing dividends through the companies, you are reaching the real taxable income of the community. My view is a contrary one. A tax on dividends paid by the companies is under many conditions apt to be amortised so that the new purchaser buys himself free. In my view, there ought to be side by side with a personal income-tax a series of impersonal taxes or taxes *in rem*. The income-tax payer can make no claim to exemption from the tax on the income from his land because of the fact that the land already pays a tax whether local rates or a national tax. In the same way, the recipient of dividends ought to receive no remission from the income-tax because of the fact that the company is already taxed. A tax on business is like a tax on land or ought to be—an impersonal tax. There is no reason why you should not have both. I know that the English corporation duty was very unpopular and was abolished, but I think the matter was badly handled. The whole tendency in the United States is to develop side by side with the personal income-tax a series of taxes *in rem*. In other words, the tendency is toward the adoption of the French system which, I think, is sounder than the Engl'sh system—the *impots cedularies* as well as the *impots generales sur le revenue*. It is not in accord with English traditions, and I do not know whether I should suggest it for England, but I wonder whether it is not legitimate for India."

Q. 35.—Yes, in favour of "earned incomes."

Q. 36.—With limited knowledge of Indian habits, I cannot say.

Q. 37.—If it is being paid without grumbling, I should not disturb it. But there is no strong case for it, if it gives rise to a sense of grievance.

Q. 40. *Prima facie*, yes, but it depends on the weight of indirect taxes on incomes under Rs. 2,000.

Q. 44.—Yes, they are thoroughly objectionable.

Q. 45.—Yes, or on the French *abonnement* system.

Q. 48.—Yes, for absolute individual justice conflicts with revenue and administrative considerations. Professor Seligman's general question is to the possibility of wider excises.

† Agreed.

‡ I *do not object* to this as a practical counsel. Dr. Gregory says:

"I would agree with the view expressed in the quotation from Sir Josiah Stamp cited in Q. 48, in so far as it implies that no one in receipt of wages or other income spends the whole of it in ways promoting efficiency. The extent to which non-efficiency expenditure can be diverted by means of taxation is, however, a matter of elasticity of demand: to tax beer, say, at a higher rate, does not necessarily lead to diversion of demand, but may lead to a lessening of expenditure in other directions.

*"I do not know that it is much use trying to distinguish between 'luxuries' and 'necessaries' as a canon of taxation, because experience seems to show that people don't spend money on 'necessaries' first, and then use any margin available for 'luxuries', as these two terms are usually defined. Some things aid efficiency in the physiological sense and others do not, as far as possible, tax the second and not the first, seems the sounder rule. It is the sound rule, because, by observing it, physiological efficiency is not affected adversely, but *psychologically*, it may be more 'onerous' to tax beer than to tax bread.

"In the list of articles submitted in Q. 49, some seem to me unsuitable as objects of taxation, because they clearly do affect productive efficiency, or production, or social well-being. Thus, at first sight, the following seem to me unsuitable as objects of taxation:—

"Acetic acid, benzine, coal, cotton goods, electric power and gas, lighting materials, matches, meat, petrol, paraffin oil, salt, soap, sugar, yeast.

"But, of course, one's final judgment must be affected by all sorts of considerations not specifically mentioned in the question. In particular:

"(a) Where specific expenditure is incurred for a particular class of the population, it may be desirable to tax the class receiving the benefit of that expenditure, e.g., petrol tax on users of motor cars;

"(b) if the consumption of the commodity for industrial purposes can be exempted from the burden of the tax, it may be desirable to impose a tax;

"(c) if the tax is intended to be part of a system of taxes, so adjusted that the consumption tax hits only those who otherwise would not pay at all, the tax may be acceptable.

"There is always a *prima facie* case against taxing an article directly subserving efficiency. For that reason, though I do not dissent from the views expressed in Q. 51, I believe that a tax on tobacco or a general capitation tax, which implies the possibility of exemption, to be better, provided that the cost of collection is not disproportionately high."

Q. 50.—Only to a very limited extent, without setting up trade reactions between *qualities* of goods.

Q. 52.—Yes.

Q. 53.—I should work out the tax burden on a low income (*via* salt), and ask, if abolished, or altered, in what probable respects well-being would be *improved* by the ordinary exercise of the improved purchasing power. If inconsiderable, I should continue the burden.

†‡*These answers refer to certain quotations in the questionnaire, Q. 48.

Dr. Gregory says:

"The question of protection on salt is raised by Q. 56. I know nothing as to the elasticity of the supply of salt in India and the practical question obviously is: by how much must the price of salt rise in order to increase by 25 per cent the local production? If this amount is not great, it may be worth while: but I cannot consider that the argument advanced in favour of the imposition of protective duties, viz., that there was 'much difficulty during the War' in consequence of one quarter of the supply coming from abroad, is at all conclusive. The probabilities have to be weighed against one another: is it more probable that the supply of salt in India is inelastic and therefore the price must rise sharply, than that India will be involved in frequent wars which will endanger the foreign supply of salt? Even if the latter is more probable than appears at first sight, will the cost to the Indian consumer be greater than the cost (by loss of interest) of maintaining large stocks in India?

"As regards the taxation of intoxicants, I agree that the position of a State which desires at once a large revenue from taxation and desires to check consumption is ambiguous: the two ends in view cannot be directly reconciled, unless certain assumptions as to the elasticity of demand are made. If the *aggregate expenditure per capita* tends to be much the same whether the cost of intoxicants is high or low, the only difference being in the amount consumed, not in the amount spent, high liquor taxes will kill two birds with one stone: it will reduce effective consumption, and not reduce revenue.

"From the standpoint of the revenue departments, the problem seems to be mainly one of *convenience*, prohibition does not mean that so much revenue is lost, but only that it must be collected in some other way. That other way may not be so convenient administratively, but since excessive drinking checks efficiency, prohibition might even in the long run add to taxable capacity.

"In the short run, of course, if a given rate of taxation checks revenue and consumption, the revenue departments will in any case have to find revenue elsewhere, so that the problem of administrative convenience is even here not avoided. Revenue departments ought to get as much as they can from liquor. If what they could get involves consumption beyond what is socially desirable, a choice has to be made. Since excessive drinking reduces efficiency and adds to State expenditure on prisons, police, hospitals, and the like, a rate higher than the one which would bring in the maximum revenue might still be economically justifiable, assuming it to be possible to be certain about these things. If it is desired to reduce drinking still more, this matter is no longer a question of revenue, but of morality."

Qs. 78 and 83.—I agree with Dr. Gregory, who says:

As to Q. 78: "Experience proves, I think, that a revenue tariff should be confined to those articles which bring in the largest revenue, and, further, that the greater part of this revenue is always in fact provided by a few articles, viz., those articles which, whether regarded as 'luxuries' or 'necessaries' are, as Q. 78 puts it, 'in common use'. The yield of the Indian customs tariff itself confirms the universal experience." (See Gregory: 'Tariff—a Study in Method', pp. 488—499 for a statistical demonstration of this statement.)

As to Q. 83: "The trend of tariff practice is unmistakably in the direction of substituting specific for *ad valorem* duties. *Ad valorem* duties have the great merit of being proportional, but against this must be set the overwhelming disadvantage that they involve valuation. It is true that in India 'official valuation' renders the actual assessment of duties easier, but, in fact, official valuation is a cumbersome system of levying a specific duty. If the import trade of a country is centred largely at a single port, as it is at New York in the case of the United

States of America, it becomes possible to maintain a specialised staff of appraisers, and to that extent, the difficulties of *ad valorem* duties are diminished. Nevertheless, the difficulties remain great, and grow with every increase in the volume of foreign trade and the multiplicity of objects which have to be handled at the ports. From the administrative point of view, specific duties are undoubtedly superior.

"Specific duties are, however, degressive if imposed at a uniform rate. A thorough-going system of specific duties involves differentiation of different grades of the commodity, and this is inconsistent with the principle of 'blanket' rates, or a few rates among which all the articles are distributed, which seems to characterise the present Indian tariff.

"Moreover, *ad valorem* duties increase in yield when prices rise, though they yield less when prices fall. The yield of specific duties is more uniform, though the burden of such duties rises when prices fall, and falls when prices rise. Hence in a period of rising prices specific duties must be altered if the real income of the State is not to suffer. For this reason the Customs Tariff should be the object of periodical survey: though where a State has tied itself by commercial treaties, this is not always possible.

"My own personal preference is decidedly in favour of specific duties in spite of the difficulties mentioned above, which seem to me not to outweigh the disadvantages of *ad valorem* duties."

Q. 89.—Generally, limited to average cost. This is not a proper way to get surplus revenue, though if litigiousness is rampant it is a luxury and might be discouraged as *particular proceedings*. Revenue from this source should relieve costs in the *essential* lines of justice.

Q. 90.—Not wholly.

Q. 91—.In England to a negligible extent.

Q. 95.—I disagree with Dalton.

Qs. 96 to 104.—I do not know enough about the way in which a rent in a particular case is determined to say whether any tax element enters into it, but *prima facie* 'rent' is either interest on capital or an inevitable economic margin which expressing a residual is not a burden on an individual, but in equalising individuals avoids improper burdens. Therefore, no subsistence level or exemption limit applies, and the claim for one is based on a misapprehension. Comparative incidence is also meaningless except in relation to comparative product or natural advantage.

The answer to Q. 102 is "Yes".

Dr. Gregory reads into the question matters relating to *taxes based on the rent*, which I do not observe. He says:

"*Land revenue.*—Taxes are contributions to the expenses of a State, raised irrespective of the direct advantage received by the individual tax-payer from national expenditure. A rent is a payment made for a fixed instrument of production and, in a society governed by self-interest, the rent paid by the user of the instrument bears some relation (and usually a close relation) to the benefit received by the user from the instrument. If the user is also the owner of the instrument, his net income is *pro tanto* increased: the amount of his gross income depending on the saleable value of the joint output of the factors of production employed.

"If the rent would have to be paid to someone else in any case, the question of what happens if a part of that rent is appropriated by the State, depends upon whether the rent-owner can shift a fraction of it back again upon the user. It is usually argued that 'economic rent' cannot be shifted, but a good deal depends on the definition of 'economic rent'. If by it is meant the value of the differential advantage offered by a particular specimen of the fixed instrument of production, it cannot be shifted back to the user; but if the *actual charge* is less than the full economic equivalent of the differential advantage conferred by the use of that particular specimen, the charge will rise. Further, even where the whole rack rent is already being charged, the non-pecuniary elements in the relation between user and owner may be changed by the imposition of the tax on the rent-charge.

"Where the user is also the owner, the tax cannot be shifted, except in so far as it discourages production and thus helps to raise prices indirectly. If the tax is an appreciable proportion of the estimated economic rent, I should feel inclined to say that the tax deters production, because the cultivator may be better off with a smaller output and a lower tax than he would have been with a higher output and a higher tax. This is a result which I should expect even if the economic rent is so assessed as to make allowance for capital improvements. Where the tax is periodically reassessed, during the period of assessment there is certainly a temptation to paint things black, i.e., to reduce output.

"The fact is that English Political Economy evolved the theory of rent to suit a country of tenant farmers and rack-renting landlords. It was assumed that (apart from interest on improvements put in by the landlord) the rent paid to him corresponded to an economic category which would persist even if the landlord and tenant were to disappear. No doubt, the better land or the better site, under whatever conditions of ownership and tenancy obtain at a given time or place, yields a bigger return, but this does not prove anything, so long as the implicit assumption is made that any system of cultivation is directed to getting the maximum return. But, as has been pointed out by Professor Cannan in (unpublished) Lectures at the London School of Economics, economic rent *can* be made to disappear. If so much of the differential advantage is absorbed that the cultivator does not benefit from the advantages of the superior instrument which he works, there will be no 'rent' to appropriate.

"Obviously, the economic rent of fixed instruments of production vary not only with the differential advantage of particular instruments for particular purposes but with the general level of prices. If the tax is fixed once and for all at a fixed amount, it ceases to vary with the varying incidents set out above. Its deterrent effect will become smaller as prices rise and *vice versa*. In the first case, its advantages as a tax diminish as its deterrent effects (if any) decline: in the second case, its deterrent effects increase in proportion as the (real) return from the tax rises. It might be possible to provide for a basic rent-charge or tax and to vary this in accordance with an index number of agricultural prices, thus 'valorizing' the charge. Both the (real) yield of the tax and the degree of deterrence attaching to that yield would then be fixed.

"Of course, the objections outlined above do not apply to the taxation of increment value as part of a system of death duties or inheritance taxes, or to the taxation of the increase of annual rent as part of a system of income-taxes. Instead of a betterment tax, I should prefer to consider the possibility of differentiation of income-tax between earned and unearned income (if this is not already done). Under death-duties, the revenue to the State may be deferred, but I do not know whether this is such a serious objection as the possibility of discouraging enterprise by differential taxation on site values."

Q. 109.—In my judgment, both theoretically and as the result of experience, no country can be progressive that relies to any extent upon octroi which has nearly every vice. The quotation from Armstrong Smith is not a bit too strong, and whatever objections may be produced against a rate on property, the latter is far to be preferred as a source of local revenue.

Q. 120.—(i) I should imagine psycholog'cally and administratively impossible.

(vi) I should think this is economically unsound as it is not a proper basis for a new rent or tax.

On death duties Professor Seligman says:

"In the next place, is there not enough accumulated wealth in India to permit of central death duties? I do not know whether you can get at any of the wealth of the local Rajas in this way; but if you cannot, you ought to be in a position where you can".

Q. 137.—Yes.

Q. 138.—I see no reason why not.

Q. 139.—(1) No.

(2) and (3) Yes.

Q. 141.—(a) Yes.

(b) and (c) No.

Qs. 142—146.—With a very l'mited knowledge of Indian conditions, I should say that a beginning ought to be made, even although the system were inevitably below European standards for two generations. A high limit and modest rates would prevent too great administrative difficulties being insuperable.

Qs. 147—162.—*Division of Proceeds.*—Dr. Gregory thinks the following are the relevant points:—

"(1) The question of *who* collects the tax must be held clearly apart from the question of who is to get the proceeds of the tax, whatever it is. I see no reason why there should not be a single collection staff. This may be a counsel of perfection, but no grounds both of economy and efficiency, it appears to me to be the ideal to aim at.

"(2) As regards the *sources* of income of the Central and Local Governments, respectively, I think that there should be separation of sources as far as possible, but that it is better, on the whole, in cases of doubt, for the Central Government to subsidise the local one, rather than the reverse. I hold this view on the ground that the number of taxes which lend themselves to provincial autonomy may be smaller than the expenditure of the provinces warrants.

"(3) It follows from the above that I do not approve of local additions to income-tax or local variations in the excise duties. A local income-tax always raises the difficult question of who is to get the income yielded: the province of residence or the province where the income is earned. Local variations in excise duties seem to me a mere bounty on smuggling, necessitating if the differences of tax are marked, 'interior customs lines' and heavy expenditure.

"(4) Of course, the amount a Provincial Government must raise depends upon the services it carries out, and there may be a conflict between the desire for local autonomy and the desire for economy and simplicity in the tax system. It is not the province of the economist to decide between 'centralist' and 'decentralist' policies as such on general grounds: on economic grounds I should be inclined to say that a Federal Scheme of Government always tends to be wasteful, and in so far as a constitution is in making, decentralist policies should be discouraged, especially as increasing mobility is in all countries making the federal divisions more and more meaningless."

Q. 147.—I should avoid (1) wherever possible, and (2) is not suitable for income-taxes unless the local areas are *very large* and self-contained. I agree that (3) and (4) make the best combination.

Q. 156.—Yes, I accept the reasoning. Division of proceeds is not easy but experience shows that rough justice can be done by fairly simple rules if subdivision is not too great. It should not be attempted for more than four or five large divisions of the whole area.

Q. 158.—Any taxes based upon total wealth of individuals extending into different areas, or an aggregate valuation of widespread properties, railways, canals, etc.

Q. 163.—Yes, except those for State, municipal may be substituted under the last four headings.

Q. 164.—No.

Q. 167.—Yes, probably up to a certain point administration counts for *more.*

Q. 171.—On the whole, yes. Professor Seligman says:

"Assuming then that you can get a larger central revenue, I should say that all of the taxes just mentioned ought to be centrally assessed, and if it seems advisable for political or for other reasons to have a greater provincial revenue, rather than grants-in-aid or allotments from the central authority, the way to solve that problem would be to carry much farther than at present the principle of the division of yield."

Qs. 167—171.—My experience shows that good administrative work cannot be done by a staff which is immediately dependent on the electorate and its representatives. It is of the first importance that the staff of a fiscal department should be absolutely independent of local changes of feeling, affections and policy generally. The importance of this cannot be too greatly emphasised and though it may be difficult to realise in some areas that it is a cardinal principle, I am more convinced of this than of anything in the realm of taxation and fiscal affairs.

Written memorandum of Dr. Gilbert Slater.

Charge for irrigation water. Qs. 15 and 16.—In my opinion, the fundamental principle here is the fundamental principle to be borne in mind in all questions of State policy, viz., that the aim to be pursued is the maximum benefit to the whole community. Broadly speaking, the system of charging which is best is that which most facilitates the extension of irrigation, since on this the economic welfare of India so largely depends. The conclusions which follow are—

(i) That the charge should always be so limited that the landowners and cultivators of the land brought under irrigation get *some* increase of income after paying the charges. Otherwise there would be local opposition. The people directly affected should always have reason to welcome the innovation.

(ii) But as an irrigation scheme is (assuming irrigation to be a provincial matter) the result of the efforts of the province as a whole, it is neither equitable nor convenient that the whole or the main part of the benefit should be monopolised by the owners and cultivators of the irrigated land. Subject to the consideration stated above, the charges should be fixed so as to bring as large a return as possible to the provincial revenues.

(iii) Irrigation schemes, like all other human schemes, have an element of uncertainty, both with regard to costs and proceeds. They are sure to prove either more or less profitable than the estimate. The province must bear the loss of failures, and should take the main part of the profit from the successful schemes, in order that it may be possible for it to undertake as many as possible of these schemes, with regard to which it is doubtful whether the proceeds will cover loan charges, but which are certain to be generally beneficial.

(iv) The net proceeds of irrigation received by the provincial treasury over and above the total charge for interest should not be entirely merged in the general revenues, but a proportion, fixed for each province according to its special conditions, should be set aside for financing protective works which are not expected to cover their costs.

(v) Since the result of irrigation is increased crop-yield, the charge should not be fixed in rupees, but in crop units, usually in maunds and seers of wheat or paddy, the crop chosen being that which will be grown most extensively on the land irrigated; the charge being, of course, payable in money, the fixed charge being converted into money at rates determined by local wholesale prices at the time fixed for payment.

(vi) Where the supply of water available by means of the irrigation work is small in comparison with the area of land capable of benefiting, the Provincial Government should reserve to itself the right of refusing irrigation water for the cultivation of crops which use much water; e.g., in the case of tank irrigation in the Madras Presidency, there are many instances where the water available is concentrated for paddy cultivation on a very small portion of the cultivable land, while a much larger addition to the food-supply would be obtained if it were used for *cholam* over an extended area.

General principles of taxation. Q. 26.—It is generally agreed among economists that the chief addition to Adam Smith's principles of taxation needed is, that *taxation should be proportionate to taxable capacity*, as nearly as may be practicable. A man's taxable capacity may be defined as that portion of his income which remains after providing for the maintenance of his own working efficiency, and of his family including such expenses as he may have to meet personally for the nurture and education of his children to the end that they may become efficient workers in their several avocations. This principle applies particularly to direct taxation. Indirect taxation of commodities in popular use which have no efficiency value, or but slight value, like alcohol, tobacco, tea and coffee and cinema entertainments, are of the nature of voluntary taxes, and the rate of taxation may be pushed up so as to get a maximum yield without injury to tax-payers. If such luxuries are injurious, the question whether they should be taxed or prohibited must be determined by the possibility of effective prohibition at the cost that can be afforded. It is very doubtful whether even America is really ripe for prohibition of alcohol—the British Ambassador's report showed that deaths from alcoholism had actually increased since the enforcement of prohibition over the whole Republic—and it is quite certain that it would be a disastrous failure if attempted in India. But the restriction within very narrow limits of *opium production* in India as a step towards world-prohibition of non-medical use is more open question, and prohibition of *charas and ganja* seems to merit more consideration than it has yet received.

In considering the application to India of the two principles stated above, viz., maximum yield from voluntary taxation and adjustment of other taxation to taxable capacity, we are faced with the need for more accurate information with regard to the physiological value of salt. British vegetarians generally contend that common salt, as an article of diet, is useless and even injurious. If this opinion is correct, the salt tax in India comes in under the head of voluntary taxation; nobody need pay it if he chooses to abstain from eating salt, which he, *ex hypothesi*, can do without injury to his health. But it has never been tested by scientific enquiry. It might be worth while for the Government of India to request the Bio-Chemical Department of the University of Cambridge to make this enquiry.

The largest class of tax-payers, who might on the principle of taxation according to taxable capacity pay more than at present, are those who derive large incomes from land. A partial abolition of the present exemption of such incomes from income-tax, combined (if it is felt that the present proportion of taxation between land and industry is fair) with a tax on the profits of joint-stock companies, including private companies, under which head come most firms of managing agents, would appear to be the readiest means of obtaining any considerable increase of revenue that may be needed without hampering industrial progress or inflicting hardship.

Prohibition. Qs. 61 *and* 62.—That Indian sentiment and opinion, so far as it is publicly expressed, strongly favours prohibition of consumption of alcoholic liquors and intoxicating drugs is obvious. It is equally obvious that the onus falls upon the advocates of prohibition of working out a practicable policy, i.e., a policy that can be enforced, and that when such a policy has been put forward, and not till then, does it become necessary to

examine its financial bearings. To maintain all over India an efficient and incorruptible army of prohibition officers, large enough to prevent palms from yielding toddy, and all the other methods of alcohol supply which nature provides so abundantly in India from being utilised, obviously could not be achieved even at the expenditure of a hundred crores per annum, under existing conditions. Prohibition to be practicable must therefore advance by gradual stages, and appropriate steps might be in the following order—

(i) More effective suppression of *illicit* consumption of both liquor and drugs.

(ii) A national campaign against consumption of noxious drugs, leading up to—

(iii) Prohibition of *charas* and *ganja*, followed by

(iv) Restriction of opium production, and

(v) Prohibition of non-medical use of opium, and of its administration to children.

Up to this point the sacrifice of revenue would be comparatively small; in fact more effective suppression of illicit consumption would yield additional revenue which would go some way to meet its cost and the loss of revenue on drugs; the remaining loss might be made up by an excise on tobacco, which is coming by degrees to be both more feasible and more potentially remunerative.

After the above steps have been taken successfully, the question of further restrictions on the consumption of *spirits* would naturally come up for consideration, in the light of experience won and of contemporary experiments in other countries. By that time the financial conditions would be such as cannot at present be foreseen.

Smuggling over land frontier. Q. 86.—*A priori*, it would seem that the most effective remedy would involve a modification of the frontier, particularly on the north-west. What is a 'scientific frontier' for India? When the phrase was first used, it appears to have meant a frontier as defensible as possible against an organized army with the equipment usual in Europe at that time. To-day a 'scientific frontier' would rather be one easily defensible against border tribal raids, and the existing frontier is open to the suspicion of being very unscientific. If the frontier were made 'scientific' in this latter sense, it would become easier to deal with smuggling.

Stamp duties and registration fees.—I agree with J. A. Hobson's opinion that stamp duties on deeds for disposal or transfer of property and on entry into a profession or apprenticeship are objectionable, and that they should be when financial conditions allow. Meanwhile, as long as they continue, it is obvious that the rates should be fixed for all-India by the Central Government, even if the proceeds continue to be part of the provincial revenues.

A question here arises which applies to other taxes also: assuming the rates are fixed by the Central Government, and the proceeds go to the Local Governments, which ought to do the collection?

I would submit that the whole question of the machinery for the collection of different taxes should be regarded as quite distinct from the question of assignment of the proceeds and as needing separate consideration. It comes into the relation between the Imperial and Provincial Governments, and also that between Provincial Governments and local governing authorities. Somewhat analogous problems occur in England. For instance, in London the rates are collected by the Borough Councils; but having been so collected, part of the proceeds go to the Imperial Government (Home Office, for Metropolitan Police), part to the London County Council, part to the Boards of Guardians, all of which 'levy precepts' on the Borough Council. The Boards of Guardians, again out of their share, have to pay their contributions to the Metropolitan Asylums Board and the Common Poor Fund. Then in fixing assessments for rates, the Borough Council's decisions are subject to appeal from the rate-payers on the one hand, and from the Inland Revenue Department of the Imperial Government on the other. Even with this check it is a notorious fact that in rich boroughs the councils generally aim at, and succeed in getting, relatively low valuations in order that the contribution of the borough to the total common London expenditure may be as low as possible; *and in poor boroughs the valuations are made relatively* high in order that the rates may appear, in the eyes of ignorant rate-payer, to be lower than they really are.

Complicated and unsatisfactory as this system is, it is obviously much better than a system under which each authority which is financed by rates collected for itself. The general conclusions indicated by British experience appear to be somewhat as follows—

(i) As far as possible, in each locality the work of collecting all sorts of direct taxes, whether proceeds go to Imperial or Provincial Governments, or to local authorities, should be unified, (a) to diminish expenses, (b) to secure the services of well-organized offices, with reliable and competent heads.

(ii) The tax-collecting service needs a high morale, and should enjoy a high status. Independence and indifference to local unpopularity, security of continuance and suitable pensions in case of good conduct should be combined with the maximum certainty of conviction and adequate punishment in case of misconduct.

(iii) Hence it is better, when the choice is between collection by a local governing authority and by a Provincial Government, that the Provincial Government should collect; when the choice is between collection by the Imperial Government and Provincial Governments, that the Imperial Government should collect.

Entertainments tax. Q. 95.—In Britain Dr. Dalton's objections to this tax are of slight importance in comparison with the fact that the tax brings in a considerable revenue with a low cost of collection and no real injury to those who pay, in the majority of instances. In India, in order to avoid administrative difficulties, I think the tax should in the first instance be levied only on cinemas; that it should be collected by the imperial tax-collecting service, but the proceeds should go to the provinces or local governing authorities.

Land revenue, Qs. 96 *to* 104 *and local taxation Qs.* 105 *to* 118.—The only way out of the difficulties and perplexities of the land revenue caused by the varied methods applied in different parts of India that I can see is, to regard the existing revenue as being that portion of the ancient revenues of the Empire that has not yet been alienated and handed over by the Government to private landowners. The injustice inflicted by permanent settlements on those landowners who have not been given permanent settlements must, I think, be regarded as regrettable but irremediable error of the past; but since that injustice is aggravated every time a fresh settlement takes place, all existing settlements might now be made permanent, provided, as suggested above, incomes from land are no longer exempted from income-tax.

With regard to Q. 100, in India there are probably scarcely any, if any, working agriculturists whose incomes exceed Rs. 2,000 per annum. To discover the agricultural incomes which exceed that amount and to assess them fairly would probably be an easier job for income-tax officers than that which they have to undertake at present in assessing incomes from trade. Parenthetically, it will generally be easier to assess the capital value of a landed property than its annual income. In case of dispute, provision might be made for the assessment of land by the owner for taxation, the value so fixed being made also the basis of the price for compulsory State purchase; i.e., the rule being that when the owner has so assessed the value, any public authority may take over the land at that price *plus* (say) 15 per cent as compensation for compulsory purchase.

With a normal development of public services, the activities and expenditure of local governing authorities must also grow. If they are to be made to feel their responsibilities, much of their expenditure should be met by taxes ('rates' if the word be preferred) on *immovable* property within their own areas. The procedure that I should recommend is that the imperial tax-collection service should be notified by the local authority as to the amount required, and should be responsible for equitable assessment of the taxable property, and the due collection of the sum required. In this way urban land values, which now largely escape taxation, would yield their due proportion at least to local expenditure.

With regard *to octroi duties* (Q. 109), the only good thing to be said of them is that custom has more or less removed or mitigated local consciousness of their injustice and oppressiveness. The criticism quoted is just as applicable to India as to any other place where goods coming into towns or villages are taxed, if it is necessary to give municipalities other tax resources than rates on real property, the best resource is to authorise them to add so many *centimes additionnels*, or so many annas and pies in the rupee to the income-tax collected from the inhabitants of the town. The income-tax levied in the city of Madras is objectionable because not properly graduated.

A considerable part of the expenditure of local governing authorities for education, sanitation and maintenance of high roads which are of more than local use may rightly be defrayed out of general provincial revenues up to 50 per cent. Such grants should only be made for specific purposes and should be subject to the results of inspection, certification that the money is properly spent and the service given efficient being required.

New sources of revenue. Qs. 119 *and* 120.—Out of the possible new taxes mentioned in the questionnaire that on agricultural incomes has been recommended above. Also a corporation tax, i.e., a tax on the incomes of joint-stock companies has been recommended. This I consider much more equitable than taxes on the capital stock, or on employers of labour, or on special industries like hotels and mines. The justification for this tax rests upon the considerations (1) that big private business can only be carried on by means of joint-stock companies, (2) that therefore joint-stock companies have a competitive advantage which is secured to them by the security of good order and enforcement of contracts and general confidence which can only come through good government, (3) that they are therefore special beneficiaries of good government, and (4) that the current wealth production of India tends continually to flow more and more through the channel of company earnings and distribution of profits.

Of the proposal mentioned in Q. 120, (i) a universal inhabited house duty, added to local duties on real property discussed above, seems to me very undesirable; (ii) taxes on imported motor cars and imported luxuries are already in existence; but a moderate tax on cars in use might be justified if the proceeds are earmarked for road maintenance; (iii) taxes on advertisements, particularly on advertisements of quack remedies, seem to be desirable for other than fiscal reasons, but from a purely financial point of view, hardly likely to be remunerative; (iv) taxes on marriages seem to me objectionable; (v) taxes on horses, servants and other means of display might perhaps be permitted to local governing authorities, but this would hit the same classes as the taxes on agricultural incomes and companies here recommended, which would be both more equitable and more productive.

Export taxes need more consideration. Before a considerable export tax on jute is adopted, care should be taken to ascertain what success the French authorities are attaining in encouraging the growth of jute in Indo-China. Export taxes on hides and skins and on raw cotton might with advantage be levied on the same principle as the tea cess, the proceeds being allotted to agricultural improvement (research, demonstration farms and diffusion of agricultural information). In the same way export taxes on fish manure, poonacs and uncrusted oil-seeds might be considered. But such taxes earmarked for the definite purpose of stimulus to agriculture would not immediately and directly affect the general finances.

Tobacco, Qs. 121 *to* 136.—Tobacco should yield an increasing excise revenue. In the first instance, I would recommend only licenses for retail sale, a limited number sold annually by auction, as suggested in Q. 136 (b). *No license to hold also a license for sale of alcohol or intoxicating drugs.* Otherwise there would be reasonable cause for fear that sale of tobacco would be used to encourage indulgence in those.

Death duties. Qs. 137 *to* 146.—If the income-tax on agricultural incomes and corporation tax are recommended to be adopted, any consideration of death duties should be postponed till it is known whether those taxes are sufficient to meet requirements. But if they be not adopted, death duties appear to be the best available resource. I can throw no light on the best methods of surmounting the special difficulties interposed by Indian conditions. The fact that the time of the death of the head of a family is usually a time of difficulty for the family makes death duties, in my opinion, an inferior resource to the alternative I have recommended.

Division of proceeds. Qs. 147 *to* 162.—Any system of division of proceeds between the Imperial and Provincial Governments must provide a loophole in case the requirements on one side or the other are excessive in proportion to the assigned revenues. In normal years, it is better that contributions should be made by the Empire to the provinces than *vice versa*. In times of national emergency, as war, the Empire should be able to draw contributions from the provinces. Taking the questions as put in order, my answers are—

Q. 147.—Yes, with proviso that the revenues of the Central Government should normally be sufficient for its own needs, and leave a surplus available for grants to provinces to meet special emergencies, like famine, or to encourage new expenditure on health, education, agricultural and technological research.

Q. 148.—I do not think this difficulty is material. The Central Government can always use surpluses for repayment of debt or for new capital expenditure which would otherwise be met by creating debt. If the surpluses are recurrent, taxes may be reduced or railway charges lowered. Deficits due to special emergencies can be met by loans; and recurrent deficits by increase of income-tax in the first place, and other taxes also if necessary. The uncertainty due to fluctuations of trade must be coped with somewhere, and the Central Government is best able to cope with it.

Q. 149.—The present division, if provincial contributions were dropped in normal years, would probably be fairly satisfactory to Madras, the United Provinces and the Punjab. If provinces are given the power of levying *centimes additionnels* on the income-tax, the financial difficulties of Bombay and Bengal should be much lightened.

Q. 151.—Yes.

Q. 152.—Taxes on imports must clearly be national, but a share of the total proceeds might be distributed by the Central Government among the provinces in proportion to their population, if such a transfer were needed to make central and provincial revenues proportionate to their needs. But the need is rather for a transfer of some revenue sources from the provincial to the central revenues at present.

Taxes on exports, on the other hand, might perhaps, though collected by the Central Government, be handed over to the provinces for which the exports come. If there were an export tax, for instance, on raw cotton, the exporter could be required to show at what station the bales were put on the railway. He would have no motive for falsifying.

Q. 153.—Yes.

Q. 154.—Yes; such a division of excise would be one way of making the central revenues adequate without provincial contributions. But in case the end is independently attained by the extension of income-tax to agricultural incomes and the corporation tax, it would not be necessary *for this purpose*. On the whole, however, I am inclined to recommend that the whole of the collection of excise revenue should be made by a Central Government service, even though the rates might vary in different provinces at the request of the Provincial Governments, and the proceeds handed over to the Provincial Governments, either in full, or the full amount less cost of collection, or in main part.

Q. 155.—Yes.

Q. 156.—Income-tax and succession duties should be levied at uniform basic rates and centrally collected. A division of proceeds should be made by the provinces having the right to ask for the addition of annas and pies in the rupee to the basic rates. The consequent variation in the total rate is undesirable in itself, but would probably be small, and insufficient to cause transfer of business from one province to another, or to create serious injustice through profits obtained in one province being taxed in another.

Q. 157.—Answered above.

Q. 160.—Yes; but not in the form of a business or profession tax.

Q. 161.—If the land revenue were proportional to the true annual value of the land, the system would probably be as satisfactory as any other system simple enough to be workable.

Q. 163.—The chief change that in my opinion needs consideration is with regard to hydro-electric works. These are necessarily monopolies and also too big for municipal control. The choice of suitable policies seems to be between State enterprise and a system of control to private enterprise similar to that applied to the London Gas Companies, whereby (1) all new capital must be raised on the best possible terms by public tender, and (2) dividends are regulated in inverse proportion to charges.

Q. 164.—No.

APPENDIX III

Chapter IV—The Land Revenue.

A Note on the incidence of land taxation in certain European countries supplied by Dr. Per Jacobsson of the League of Nations Secretariat.

(Vide pages 32-36, paragraph 50 of Volume I.)

The study of the real burden of the taxes falling on land presents great difficulties of various kinds. *In the first place it is impossible to* limit the investigation to the land tax proper (*l' impôt foncier, Grundsteuer*). The tendency in some countries of Europe has been to abolish the land tax altogether and to make profits from agriculture and forestry subject to the ordinary income-tax with annual assessments. Such a reform was carried out in Finland in 1924. *But in France, Germany and Eastern Europe* the land tax is still an important part of the fiscal system, although no longer the only tax levied on landed property. Practically everywhere landowners are subject to the general income-tax and for owners of large estates especially the income-tax often represents the greater burden. A further complication arises from the fact that the land tax as *established by State* taxation is often increased by additional surtaxes levied by municipalities and other local bodies. These local charges are of course very different in different districts according to methods of managements of local finances.

Unfortunately it is not possible to rely upon the nominal rates fixed in the various fiscal laws.

The land tax is most often assessed according to a land register—known as a *cadastre*—which is notoriously out of date, giving values quite out of correspondence to the profits earned to-day. Further, assessments for income-tax are not always complete. The degree of accuracy varies enormously, but it may be taken as a general rule that agricultural profits are assessed too lightly.

In a number of European countries there are disputes going on at present, which have their political repercussions regarding the taxation of land. Landowners maintain that the existence of a land tax *in addition to income*-tax involves double taxation (taxing revenue from the same source twice). On the other hand the urban population (especially industrial and commercial circles) points out that a number of taxes (trade taxes, etc.) do not fall on landowners at all and that in any case the assessments for land taxation are ridiculously low.

France—

In France, where the question of proper land taxation is a very burning one at present, a financial author—Dr. Jean *Bechet—in a book* published in 1924 made the following comparison of the charges falling on agriculture and on industry and trade in the year 1921:—

Various taxes.	Falling on agriculture. FRS.	*Falling on industry* and trade. FRS.
(*a*) Impôt foncier des propriétés non bâties—Land tax (property not built on) ..	226,820,000	..
(*b*) Contribution fonciére des propriétés bâties—Ground tax (land built on) ..	..	58,941,000
(*c*) Cédule desbénéfices agricoles—Schedular tax on agricultural profits	28,302,000	..
(*d*) Cédules des bénéfices industriels et commerciaux—Schedular tax on industrial and commercial profits	..	980,962,000
(*e*) Impôt global sur le revenue—General income-tax	42,296,000	474,978,000
(*f*) Taxes assimilées—Assimilated taxes ..	..	52,000,000
(*g*) Prestations—Various charges	96,000,000	..
(*h*) Taxe vicinale—Rural road tax ..	22,912,000	..
(*i*) Impôt sur le chiffre d'affaires—Turnover tax	..	1,897,457,000
(*j*) Patentes	..	573,888,000
Total ..	416,330,000	4,038,226,000

Now the agricultural population amounts to about 40 per cent of the total active population in France. These figures are, however, not uncontested, it having been pointed out that the *"Impôt sur le chiffre d'affaires"* (the turnover tax) is at least partly being transferred to the consumer living in the country.

The divergent opinions thus existing render it very difficult to make a statement on the question of the ratio of land taxation. There have hardly been any official enquiries into this matter since the War. The following notes contain only a few indications for some countries. At the same time they may perhaps serve to show the great difficulties involved in making a comparison of the tax burden in different countries.

Hungary—

The land tax is based on an out-of-date land cadastre (land register for fiscal purposes). The nominal rate is fixed at 25 per cent of the net cadastral yield. Professor Bela Foldes, a Hungarian expert on financial questions, estimates the real rate calculated in proportion to the true yield of the land at 8—12 per cent.

To this rate there should be added (a) certain local surtaxes differing in different municipalities; (b) the general income-tax which also applies to agriculture. The rates of this tax are as follows:—

Income of less than 800 gold crowns	tax free
Income of more than 800 but less than 200,000 gold crowns ...	1-39 per cent.
Income of 200,000 or more gold crowns ...	40 ,,

There is in addition a capital tax, the rate of which varies from 1 to 20 per cent of net revenue from the capital.

The minimum rate falling on land may be estimated at about 15 per *cent, the maximum rate at more than 60 per cent*, of the net annual yield of the land. The effective burden of the nominal rates fixed in the law, however, greatly depends upon the care taken by the assessing authorities.

Austria—

The land tax is based on an old land cadastre as in Hungary.

The nominal rate amounted in 1913 to 26⅔ per cent of the net cadastral yield which was equivalent to about 10—15 per cent of the real yield. In addition there were local surtaxes (*centimes additionnels*) which were often higher than the tax to the State. The average rate of the land tax including local surtaxes may perhaps have amounted to about 25 per cent. Finally the landowners were also subject to the graduated income-tax.

After the War the land tax became a local tax only. It was stipulated in the Reconstruction Law that local bodies were to be compelled to raise the land tax to 75 per cent at least of the gold value of the tax payable to the State in 1913. As a matter of fact the local bodies have generally increased the rate above this minimum, viz., to between 100—150 per cent of the pre-War gold value.

It should, however, be borne in mind, that, if the present taxation is compared with the pre-War State tax and the local surtax taken together there has probably not been an increase in agricultural taxation, perhaps even a decrease. But on the other hand the agricultural income has probably gone down owing to the disappearance of the pre-War protective tariff (6 gold crowns per 100 kilogrammes of grain) and further, the rates of the income and capital taxes are much higher than before the War with the result that the larger estates are subject to much heavier taxation than in 1913. The following table gives the rates of the income-tax and the capital tax, the latter being recalculated on the income:—

Income in gold crowns.				Income-tax rate.	Capital tax rate.	Total rate if all income is from property.
				PER CENT.	PER CENT.	PER CENT.
Less than	778	..	..	..	..	..
Not less than	778	but less than	1,945	1·1	..	1·1
,,	1,945	,,	2,500	1·1	1·0	2·1
,,	2,500	,,	3,000	2·2	1·0	3·2
,,	3,000	,,	4,000	2·2	1·0	3·2
,,	4,000	,,	5,000	3·3	2·0	5·3
,,	5,000	,,	10,000	4·0	2·0	6·0
,,	10,000	,,	15,000	4·5	4·0	8·5
,,	15,000	,,	20,000	5·3	6·0	11·3
,,	20,000	,,	25,000	6·8	6·0	12·8
,,	25,000	,,	50,000	8·5	6·0	14·5
,,	50,000	,,	75,000	15·9	6·0	21·9
,,	75,000	,,	100,000	19·6	6·0	25·6
,,	100,000	,,	250,000	22·5	6·0	28·5
,,	250,000	,,	500,000	34·0	6·0	40·0
,,	500,000	,,	1,000,000	39·5	6·0	45·5
,,	1,000,000	..	..	42·3	6·0	48·3

The theoretical maximum rate of taxation, including land tax, falling on land approaches 70 per cent. A landowner enjoying an income of 10,000 gold crowns (about £400) will have to pay 25—30 per cent, if a correct assessment is made.

Czecho-slovakia—

The old Austrian system is still in force. The land tax is a State tax and local bodies are entitled to levy surtaxes which are often very heavy. It is not possible to estimate the average burden of the land tax.

Agricultural profits are also subject to income-tax and capital tax.

The agricultural taxation taken as a whole is probably as high as, if not higher than, in old Austria.

Italy—

The taxation of incomes in Italy is of two different forms:—

(1) A number of schedular taxes with a fixed proportionate rate;

(2) a general progressive personal tax, which supplements the schedular taxes.

The schedular taxes on land are:

(a) Land tax, at the rate of 10 per cent, falling only on the economic rent of land and assessed according to a system of cadastres, some of which date from the period before 1870. The cadastres have been revised several times according to a law of 1886.

(b) Tax on the income of farmers cultivating their own land. This tax is imposed on the income arising from the work and the capital of farmers as distinct from free income from land. The income is assesed on the basis of declarations by a commission in each district.

If land is let to a farmer, the proprietor pays the land tax and the farmer in this case pays the schedular tax on industry and commerce, which is imposed on all kinds of enterprises other than those based on ownership of land and houses. The rate of this tax is 18 per cent on his net income.

All income, however small, from land pays the same rate as the land tax. Income of farmers cultivating their own land, as well as the income from commerce and industry earned by farmers renting land is exempt from

taxation if it does not exceed 435 or in some cases 800 lire yearly (at the present rate of exchange = £4 and £7 sterling respectively). As the minimum exempted is so paltry a sum, practically all incomes are subject to the above taxes.

It should be mentioned in this connection that local surtaxes may be added to the State land tax by provinces and municipalities. By a reform of 1925 these local surtaxes may not exceed 150 per cent of the basic rate, so that the total land tax is now limited to a maximum of 25 per cent of the annual yield.

General Income-tax.—Over and above the different schedular taxes a universal income-tax was introduced in 1925. This tax falls on the total of all incomes received by the tax-payer, his wife, and his sons of less than 21 years of age. The taxable income is the total of the various incomes, less other taxes paid, national and local, insurance premiums, interest on debts, and a deduction of one-twentieth of the net income for each dependent person (excluding himself and wife). The one-twentieth deduction cannot exceed 3,000 lire. The rate of taxation is as follows (the figures in parentheses are the equivalent in pounds sterling at the present rate of exchange, 120 = £st. 1):—

		Lire	£	Per cent of income.
On taxable income of		3,000	(25)	1·09
,,	,,	5,000	(42)	1·22
,,	,,	10,000	(83)	1·61
,,	,,	20,000	(166)	2·12
,,	,,	50,000	(416)	3·05
,,	,,	100,000	(833)	4·01
,,	,,	200 000	(1,666)	5·28
,,	,,	500,000	(4,166)	7·60
,,	,,	1,000,000	(8,333)	10·00

All the rates are to be increased by 20 per cent. as the municipal authorities have the right to superimpose a fifth of the State tax for their own benefit. If we add to the schedular taxes on incomes, which take from 10 to 18 per cent of all agricultural incomes, the new general income-tax, we get a very considerable total, especially on incomes below £166 sterling, which English and Americans usually exempt entirely from direct income taxation.

If a farmer has an income of 10,000 lire (about £100) from his own land, he will have to pay:

(a) on that portion of the income which is subject to land tax, 10 per cent;

(b) on the portion considered as profit from his work and capital, 10 per cent;

(c) local surtax, maximum 15 per cent;

(d) State income-tax (super-tax) about 2 per cent;

(e) local surtax on State income-tax, 0.4 per cent.

That is, a total of roughly 27 per cent.

On an income from land of 100,000 lire (£1,000) the total rate will be roughly 29—30 per cent.

Under the present Government in Italy the assessment of incomes has been very strict and the yield of taxation has increased regularly during the last few years.

The Italian cadastre contains assessments of the yield of each piece of land (and does not give the capital value).

Bulgaria—

Up to the year 1921 there was a land tax in Bulgaria based on a cadastre giving, in the usual way, the annual value (and quality) of different taxes of land. By a reform effected by M. Stamboulisky in 1921, this land tax was abolished and a modern income-tax was introduced, based upon declarations by the peasants. The modern system broke down, however, as the peasants did not declare any income and the whole burden thus fell upon the towns. After a change of Government in 1923, the income-tax was modified in such a way as to exclude from the income-tax the income from land. On the other hand, the old land tax was reintroduced and the rates of taxation were at the same time increased in order to counterbalance the reduction in the purchasing power of money.

Swedish Fiscal System—

The Swedish system of direct taxation is characterised by the almost complete reliance upon modern income-taxes for providing the resources for both central and local authorities. The special land taxes levied upon agriculture were finally abolished during the last two decades of the 19th century. The State taxation is now exclusively based upon a modern income-tax, the peasants having to tender their declarations in the same way as other tax-payers and being entitled to the usual deductions for mortgage and other interest, for children under 15, for losses sustained, etc.

The local taxation of land is, however, still—in a way—based on a land register. The capital value of all taxable land is estimated by commissions every five years. The estimates may not be lower than, (a) the price paid at sale of such land, (b) insurance valuation of houses thereon, and may be taken as fairly correct. Six per cent of the capital value is considered as the income derived from land and the landowners are taxed on the basis of an income thus calculated. If their income has been higher—according to the income assessments—that surplus income is taxed by the general local tax. The system operates to ensure a minimum tax on income from agriculture.

It has been proposed to change this system slightly and to make land subject (a) to the general local income-tax and (b) to a special tax calculated on the capital value of land as in a land register. (There will be another special tax on industrial enterprise but there will not be a special tax on salaries). The underlying idea is that land and industrial enterprises are more permanently connected with the localities in which they are situated and that the expenditure made by local bodies is very often of direct and special benefit to owners of fixed property. It is intended to be a kind of taxation based on the interest of the tax-payer in the public body. It should, however, be admitted that the extra burden placed upon agriculture and industry will be very slight indeed under normal conditions. Only in the case when in a locality the total assessed amount would show a great abnormal decrease during a certain year and therefore the yield of the ordinary income-tax would be reduced, would the taxation, according to a land register, be of great importance and then the special tax might become heavy, as it would be the only available source of revenue.

rates of local taxation, which are proportional, vary from 4 to 16 of the income, with an average of perhaps 9 per cent. The State tax is progressive, varying at present from 5 to 20 or 22 per cent nally. There are, in fact, several deductions permitted which make the tes lower, perhaps from 2 to 20 per cent. For an income of £100 the rate is about 5 per cent.

Germany Prussia—

The land tax proper is regulated by local (*Laender*) legislation. The following indications refer to Prussia:

The Prussian land and building tax (*Land-und-Gebäudesteuer*) is levied under the terms of the Prussian law concerning a provisional tax on land, of February 14th, 1923, as amended by February 28th, 1924. In assessing agricultural property for the purpose of this tax, the value of the live-stock and machinery is included.

The tax is fixed provisionally on the basis of the supplementary tax value for 1917—19. The monthly rate is 0.20 marks per each 1,000 marks of the value of dwellings, 0.10 to 0.25 mark per each 1,000 marks of the value of property used for agricultural, forestry, and horticultural purposes, and 0.25 mark on all other property.

This tax is assessed by special tax committees and is collected by the municipalities, which are authorised to levy surtaxes. The surtaxes approximate 200 per cent. Thus the total tax burden would amount to about 0.6 per cent of the value of the property, or, when calculated to have a rental value of 3 per cent, 20 per cent thereof.

Landowners are further subject to the income-tax, which is paid to the Federal Government. The rates vary from 10 to 60 per cent. Slight reductions are permitted for members of a family. Amounts paid in local taxes may also be deducted from the income.

The minimum rate of taxation falling on land will thus be about 28 per cent.

APPENDIX IV

A compendium of opinions on the nature of the Indian Land Revenue.

(Vide pages 60-67, paragraphs 78-84 of Volume I.)

As very varying opinions have been held by eminent authorities at different times as to whether, and if so how far, the Indian land revenue partakes of the character of a rent or a tax, respectively, it is proposed to set forth below the actual words of the principal authorities who have dealt with the question, ranging them in chronological order as far as possible. Several eminent authorities, who would otherwise have been separately quoted, have been omitted from the catalogue for the reason that their opinions are fully given in the very important judgment of the Bombay High Court in *Vyakunta Bapuji v. the Government of Bombay*, from which a long quotation is given.

Sir PHILIP FRANCIS: *A minute, dated 22nd January 1776: Extract printed in R. Dutt's Economic History of India—Early British Rule, page 59, and W. K. Firminger's Historical Introduction to the Bengal Portion of the Fifth Report on East Indian Affairs, page cci.* 1776

"The greater part of the zemindars were ruined and dispossessed of the management of their lands, and there were few people of rank and family left, or of those who had formerly held high employments; such as there were, looked for large profits, which the country could not afford them and pay the rents also. People of lower rank were therefore of necessity employed as Amils or collectors on the part of the Government. These people executed a contract for a stipulated sum for the district to which they were appointed, and in effect they may be considered as farmers of revenue. They then proceeded from the Sudder, or seat of government, to the districts to settle with the zemindars or tenants for the revenue they had engaged to pay.

* * * * *

The Jumma (assessment) once fixed, must be a matter of public record. It must be permanent and unalterable; and the people must, if possible, be convinced that it is so. This condition must be fixed to the lands themselves, independent of any consideration of who may be the immediate or future proprietors. If there be any hidden wealth still existing, it will then be brought forth and employed in improving the land, because the proprietor will be satisfied that he is labouring for himself.

* * * *

The Company had conceived an early, but erroneous, opinion that the governing power was proprietor of the soil; consequently that in the management of their territorial acquisitions, they ought not to content themselves with a fixed tribute as Government, since they had a right to ingross the entire produce as landlord."

Mr. JAMES GRANT (*Resident at Hyderabad and later Chief Sheristadar to the Board of Revenue, Bengal) Historical and Comparative Analysis of the Finances of Bengal, dated 27th April 1786, printed in the Fifth Report on the Affairs of the East India Company, Volume II, page 170. The passage deals with a tract published at the time: "Original Minutes of the Governor General in Council, 1776, with a plan for the settlement of the revenues of Bengal", to which Mr. Grant is replying.* 1786

"First, the grand material difference between us, is on the nature of landed property. It is positively affirmed on the one side, "that the lands of these provinces are not the property of the East India Company as sovereign representative, but of the zemindars and other classes of the natives, who owe nothing to government but a fixed portion of the net produce," indifferently described in other parts of the work under the denomination of a quit rent tribute, or land tax. This is declared to be "the main hinge on which the whole argument for the proposed settlement turns;" and the author's deductions will be found to flow regularly from that position. But it must at the same time, in justice be observed, that it is the *principle* of this doctrine, as thought essential to the public interests, that seems to influence the ready belief of its constant admission into the system of Mogul legislation, rather than any solid proofs of the fact, from what can be deemed *incontrovertible evidence, either official,* written, or circumstantial; for, agreeable to an established European maxim, involving however a distinct secondary question, it is inferred, that the proprietary uses of the soil, would be incompatible with the actual sovereignty; and that a mind impressed with such a notion might not be open to conviction, though the point of right were otherwise determined by authority. On the other hand, in the political disquisition delivered in to the *Board in December 1784, relative to the* northern circars, and to which I must beg leave frequently to refer, when treating of the subject of Indian finance in general, the very reverse of the foregoing proposition, in its more important as well as its subsidiary affirmations is set forth as incontestible, on substantial specific grounds, admitting of an immediate, final, or determinate issue. The sovereign ruler in all parts of Hindostan, if not through the whole of Asia, unless it be in the Russian dominions, is declared to be the sole virtual proprietor of the soil; not in the European feudal acceptation of the term, agreeable to which it hath lately been attempted to be qualified, implying a fictitious tenure as lord paramount, from whom all lesser holdings are supposed to be derived by every class of subjects, but in right and fact, the real acting landlord entitled to, and receiving from the ryots or husbandmen, a certain portion of the gross yearly returns of the country in money or kind, fixed on a medium in Bengal, at one-fourth of the whole produce, according to a pecuniary estimation made about the year 1582, soon after the establishment of the Mogul government under Akbar, and continued thence, without any deviation in the principle, down to the present time, though it is much to be feared the iniquitous practices of Indian landholders may have clandestinely exceeded that original equitable standard. It is further advanced as incontrovertible that the zemindars or other classes of natives, hitherto considered the rightful proprietors of the lands, are actually no more than annual contracting farmers or receivers of the public rents, with stated allowances in the nature of a commission on the receipts, and a small estate or portion of their territorial jurisdictions set apart for constant family subsistence, whether in or out of office, but never exceeding in the whole, by an universal prescriptive law of the *empire, 10 per cent* on the Mofussil collections: and that to alter or otherwise define these fundamental, implicitly acquiesced-in, rules of financial jurisprudence in India ascertaining the nature of civil tenures, the established mode of levying, and actual amount of the rental or yearly assessment of the land, would be no less impolitic, useless, and dangerous, in respect to probable future consequences, than unconstitutional, unnecessary, and a wanton sacrifice of the dearest, most essential interests of government, in the present moment."

1789 **Sir John Shore** (*Lord Teignmouth*): *Minute, dated 18th June 1789, "respecting the Permanent Settlement of the Lands in the Bengal Provinces," printed in the Fifth Report on the Affairs of the East India Company, Volume II, pages* 61, 80, 83 *and* 106.

"We have admitted the property in the soil to be vested in the zemindars; and although it should be proved, under the Mogul system, to have belonged to the sovereign, which I deem impossible, the Company ought in my opinion to relinquish it. The mere admission of the right, unless followed by the measures that will give value to it, will operate but little towards the improvement of the country. The demands of a foreign dominion like ours, ought certainly to be more moderate than the impositions of the native rulers, and to render the value of what we possess permanent, our demands ought to be fixed. Removed from the controul of our own government the distance of half the globe, every practicable restriction should be imposed upon the administration in India, without circumscribing its necessary power; and the *property of the inhabitants be secured against* the fluctuations of caprice, or the license of unrestrained controul.

* * * * *

I consider the zemindars as the proprietors of the soil, to the property of which they succeed by right of inheritance, according to the laws of their own religion; and that the sovereign authority cannot justly exercise the power of depriving them of the succession, nor of altering it, when there are any legal heirs. The privilege of disposing of the land, by sale or mortgage, is derived from this fundamental right, and was exercised by the zemindars before we acquired the Dewanny.

The origin of the proprietary and hereditary rights of the zemindars is uncertain; conjecture must supply what history does not mention; they probably existed before the Mahomedan conquest, and, without any formal acknowledgment, have acquired stability by prescription.

I do not admit the sunnud, which the zemindars sometimes receive, to be the foundation of their tenure; which though it may acquire confirmation from it, exists independent of this deed. The origin of the possession of some zemindarries may be traced to a grant, but the inheritance goes on, without it.

The revenues of the land belong to the ruling power; which, being absolute, claimed and exercised the right of determining the proportion to be taken for the state.

The rights of the zemindars are limited and conditional. They cannot alienate lands from the public assessment, without the permission of the supreme authority; they are bound to make good their stipulated payments of revenue, under the penalty of suffering an equivalent loss of property, or of being deprived of the whole; and it is also their duty to preserve the peace of the country from infringement, and to secure their lands from inundation, by repairing the embankments of the rivers. The performance of these functions, supposes the means of discharging them to be left with the zemindars.

* * * * *

A property in the soil, must not be understood to convey the same rights in India, as in England; the difference is as great as between a free constitution and arbitrary power. Nor are we to expect under a despotic government fixed principles, or clear *definitions of the rights of the subject;* but the general practice of such a government, when in favour of its subjects, should be admitted as an acknowledgment of their rights.

* * * * *

I know but one answer to this supposition: that it is scarcely probable the zemindars, when their property is secured by a limitation of the demands for land tax, will ever prove defaulters in a degree, to affect the public revenue. Thus far probability opposes presumption, but it does not answer the objection completely or satisfactorily; for a zemindar may be ruined through his own ignorance and the knavery of his servants, not to mention that their general conduct is against the probability."

The Preamble to Madras Regulation XXXI of 1802 *(now repealed) ran as follows:—* 1802

"Whereas the ruling power of the provinces now subject to the Government of Fort St. George has, *in conformity to the* ancient usages of the country, reserved to itself and has exercised the actual proprietary right of lands of every description; and whereas, consistently with that principle, all alienations of land, except by the consent of the ruling power, are violations of that right; but whereas considerable portions of land have been alienated by the unauthorized encroachments of the present possessors, by the clandestine collusion of local officers, and by other fraudulent means; and whereas the permanent settlement of the land-tax has been made exclusive of alienated lands of every description; it is expedient that rules should be enacted for the better ascertainment of the titles of persons holding, or claiming to hold, lands exempted from the payment of revenue to Government under grants not being badshahi or royal, and for fixing an assessment on such lands of that description as may become liable to pay revenue to Government: wherefore the following rules are enacted for that purpose."

1810 Lieut.-Col. MARK WILKS: *Historical Sketches of the South of India, page* 148.

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

1813 *Despatch from the Court of Directors to the Government of Madras, paragraph* 165, *quoted in Bombay High Court Reports,* 1875, *Volume XII.*

"In framing fiscal arrangements applicable to the existing state of society in Malabar and Kanara, it is important not to lose sight of the strong ground upon which the proprietary rights of the landholders in those provinces are founded. By attempting to introduce an intermediate class of persons (call them Zemindars, Mootahdars, or what we may) between the Government and the Jelmkars,(1) or hereditary proprietors of the soil, we should not be creating an order of great proprietors, since we have not property in the land to confer, with the exception of some forfeited estates; but we shall be raising up a set of farmers of revenue, with interests distinct from, and at variance with, the interests both of the sovereign and the subject. Fortunately the thriving condition of the provinces, and the improving state of the public revenue under the present mode of collection, remove every inducement to hazard experiments upon a system which, though it may have its inconveniences in common with every other system, a trial of several years has shown to be, in operation, highly beneficial."

1818 *Minute of the Board of Revenue, dated the 5th January* 1818, *printed in the Madras Revenue Selections, East-India House Records, Volume I, pages* 888, 889 *and* 940.

"In proceeding to investigate the rights of the Ryot, the Board deem it proper to premise that this term, which is familiar to all acquainted with Indian finance, as applied to designate the cultivators of the soil in general, is here employed by them to distinguish that particular class only among them who employ, superintend, and sometimes assist the labourer, and who are everywhere the farmers of the country, the creators and payers of the land revenue.

* * * * *

The hereditary right of the Ryot, as above described, though everywhere of the same, or at least of a similar nature, is in value very different in different districts. After discharging the wages of his hired labourers, and defraying the subsistence of his slaves, or other immediate expenses of cultivation, if the public assessment payable by him is so moderate as to leave him a considerable annual surplus, his interest in the soil is that of the *landlord*, and his land yields a clear land rent, and is of course a saleable and transferable property; but where the revenue payable by him is so high as to absorb the whole of the landlord's rent, and to leave him a bare and precarious subsistence only, his interest in the land dwindles into mere occupancy, and from a *landlord* he is reduced to a *landholder*, still indeed clinging to the soil and subsisting by tilling it, but no longer possessing any saleable property in it.

* * * * *

In those provinces which we acquired from the Mussulman princes of the peninsula, the state of private property in the land, at the period of their transfer, has already been described to have been so reduced by their

(1) In Malabar the hereditary proprietor is styled "*Janmakaran,* or *Jenmkar,* corruptly *Jenmacar* or Jelmkar."

exactions, as to have required the most fostering and careful management on our part to preserve it from entire annihilation. But however beneficial in other respects our administration may have proved to the people, it is greatly to be feared that the almost immediate introduction into these districts of the ryotwar system, which included not only an entire new measurement of the land, but an entire change in the nature and in many instances in the extent of the land-tax, which forcibly changed warum into teerwa, and by which new rates of teerwa were substituted even where the revenue was heretofore payable in money, tended to complete the destruction of that property which it was so much our interest and our duty to support."

The Hon. MOUNTSTUART ELPHINSTONE: *Report on the Territories conquered from the Peshwa, 25th October* 1819, *printed in the Bombay Judicial Selections, East-India House Records, Volume IV, pages* 159-160. *The exceptions referred to in the opening line of the extract are the head-man, the silver-smith, the watchman and the accountant of the village and the tenure of land dealt with is the Mirasi tenure.* 1819

"With the few exceptions already mentioned, all the villagers are cultivators, and there, as there are few labourers, are distinguished by their tenures into two classes, that of Meerassees or landed proprietors, and that of Ooprees or farmers. ***Potedar.***

As I was particularly directed to attend to the tenures of land, I have called on the Collectors to furnish the requisite information. . . . The result of those reports and of my own inquiries is, that a large portion of the Ryots are the proprietors of their estates, subject to the payment of a fixed land-tax to Government; that their property is hereditary and saleable, and they are never dispossessed while they pay their tax, and even then they have for a long period (at least thirty years) the right of reclaiming their estate on paying the dues of Government. Their land-tax is fixed; but the late Mahratta Government loaded it with other impositions, which reduced that advantage to a mere name. . . . . ***Meerassees or landed proprietors.***

An opinion prevails throughout the Mahratta country, that under the old Hindoo government all the land was held by Meerassees, and that the Ooprees were introduced as the old proprietors sunk under the tyranny of the Mahomedans. This opinion is supported by the fact, that the greater part of the fields now cultivated by Ooprees are recorded in the village books as belonging to absent proprietors, and affords, when combined with circumstances observed in other parts of the Peninsula, and with the light land-tax authorized by Menu, a strong presumption that the revenue system under the Hindoos (if they had an uniform system) was founded on private property in the soil."

The Hon. MOUNTSTUART ELPHINSTONE: *The History of India,* 1857, *page* 72.

"This account of the different occupants of the land naturally leads to the much agitated question of the property in the soil; which some suppose to be vested in the state; some, in the great Zemindars; some in the village landholders; and some, in the tenants.

Property in the soil.

The claim of the great Zemindars will be shown, in its proper place, to be derived from one of the remaining three; among whom, therefore, the discussion is confined.

Property in land seems to consist in the exclusive use and absolute disposal of the powers of the soil in perpetuity; together with the right to alter or destroy the soil itself, where such an operation is possible. These privileges, combined, form the abstract idea of property; which does not represent any substance distinct from these elements. Where *they* are found united, *there* is property, and nowhere else. Now the King possesses the exclusive right to a proportion only of the produce. This right is permanent, and the King can dispose of it at his pleasure; but he cannot interfere with the soil or its produce beyond this limit. If he requires the land for buildings, roads, or other public purposes, he takes it as magistrate, and ought to give compensation to his fellow-shareholders, as he can on emergency seize carts, boats, &c., and can demolish houses in besieged towns, although in those cases he has no pretensions whatever to property.

As much of the produce as comes into the hands of the landholder, after the King's proportion is provided, is his; and his power to dispose of his right to it for all future years is unrestrained. The tenant has what remains of the produce after the King's proportion and the landlord's rent is paid; and this he enjoys in perpetuity; but the right is confined to himself and his heirs, and cannot be otherwise disposed of.

Neither the landholder nor the tenant can destroy, or even suspend, the use of the powers of the soil: a tenant forfeits his land when he fails to provide a crop from which the other sharers may take their proportions; and a landholder guilty of the same default would be temporarily superseded by a tenant of the community's or the King's, and, after a certain long period, would be deprived of his right altogether.

From all this it is apparent that, where there are village communities and permanent tenants, there is no perfect property in any of the sharers. Where there are neither communities nor permanent tenants, the King doubtless is the full and complete proprietor; all subsequent rights are derived from his grant or lease. The extent of those grants varies with circumstances; but when they are given without reserve and in perpetuity, they constitute a perfect form of private property.

Many of the disputes about the property in the soil have been occasioned by applying to all parts of the country, facts which are only true of particular tracts; and by including, in conclusions drawn from one sort of tenure, other tenures totally dissimilar in their nature. Many also are caused by the assumption, that where the government attends to no rights, no rights are now in being. Yet those rights are asserted by the sufferers, and not denied by those who violate them; and often, in favourable circumstances, recover their former efficiency. Practically, the question is not in whom the property resides, but what proportion of the produce is due to each party; and this can only be settled by local inquiries, not by general rules founded on a supposed proprietary right, nor even on ancient laws long since forgotten."

1820 James Mill: *The History of British India, Volume I, pages 256 to 276.*

"The tenure of land in Hindustan has been the source of violent controversies among the servants of the Company; and between them and other Europeans. They first sprung up amid the disputes between Mr. Hastings and Mr. Francis, respecting the best mode of taxing Bengal. And they have been carried on with great warmth, and sometimes with great acrimony, ever since. Of these controversies the account will be due, at the periods when they occur. At present it will suffice to bring to light the circumstances which appear to ascertain the ancient state of the country, in respect to the distribution of property in the land.

In a state of society resembling our own, in which property is secure, and involves very extensive rights or privileges, the affections which it excites are so strong, and give such a force to the associations, by which the idea of it is compacted and formed, that in minds of little range, whose habits are blind and obstinate, the particulars combined together under the idea of property, appear to be connected by nature, and cannot, without extreme injustice, be conceived to exist apart.

At different times, however, very different rights and advantages are included under the idea of property. At very early periods of society it included very few: originally, nothing more perhaps than use during occupancy, the commodity being liable to be taken by another, the moment it was relinquished by the hand which held it: but one privilege is added to another as society advances: and it is not till a considerable progress has been made in civilization, that the right of property involves all the powers which are ultimately bestowed upon it.

It is hardly necessary to add, that the different combinations of benefits which are included under the idea of property, at different periods of society, are all equally arbitrary; that they are not the offspring of

nature, but the creatures of will; determined, and chosen by the society, as that arrangement with regard to useful objects, which is, or is pretended to be, the best for all.

It is worthy of remark, that property in moveables was established; and that it conveyed most of the powers which are at any time assigned to it; while, as yet, property in land had no existence. So long as men continue to derive their subsistence from hunting; so long, indeed, as they continue to derive it from their flocks and herds, the land is enjoyed in common. Even when they begin to derive it partly from the ground, though the man who has cultivated a field is regarded as possessing in it a property till he has reaped his crop, he has no better title to it than another for the succeeding year.

In prosecuting the advantages which are found to spring from the newly-invented method of deriving the means of subsistence from the ground, experience in time discovers, that much obstruction is created by restricting the right of ownership to a single year; and that food would be provided in greater abundance, if, by a greater permanence, men were encouraged to a more careful cultivation. To make, however, that belong to one man, which formerly belonged to all, is a change, to which men do not easily reconcile their minds. In a thing of so much importance as the land, the change is a great revolution. To overcome the popular resistance, that expedient which appears to have been the most generally successful, is, to vest the sovereign, as the representative of the society, with that property in the land which belongs to the society; and the sovereign parcels it out to individuals, with all those powers of ownership, which are regarded as most favourable to the extraction from the land of those benefits which it is calculated to yield. When a sovereign takes possession of a country by conquest, he naturally appropriates to himself all the benefits, which the ideas of his soldiers permit.

In many of the rude parts of Africa, the property of the land is understood to reside in the sovereign; it is in the shape of a donation from him, that individuals are allowed to cultivate; and when the son, as is generally the case, succeeds to the father, it is only by a prolongation of the royal bounty, which, in some places at least, is not obtained without a formal solicitation. It is known, that in Egypt the king was the sole proprietor of the land; and one-fifth of the produce appears to have been yielded to him as revenue or rent. Throughout the Ottoman dominions, the Sultan claims to himself the sole property in land. The same has undoubtedly been the situation of Persia, both in ancient and modern times. "It is established," says the late intelligent Governor of Java, "from every source of inquiry, that the sovereign in Java is the lord of the soil." And when the fact is established in regard to Java, it is established with regard to all that part of the eastern islands, which in point of manners and civilization resembled Java. It is not disputed that in China the whole property of the soil is vested in the Emperor. By the laws of the Welsh, in the ninth century, all the land of the kingdom was declared to belong to the king; and we may safely, says Mr. Turner, believe, that the same law prevailed while the Britons occupied the whole island.

To those who contemplate the prevalence of this institution, among nations contiguous to the Hindus, and resembling them in the state of civilization, it cannot appear surprising, that among them, too, the sovereign was the lord of the soil. The fact is, indeed, very forcibly implied, in many of the ancient laws and institutions. "Of old hoards," says one of the ordinances of Menu, "and precious minerals in the earth, the king is entitled to half by reason of his general protection, and because he is the supreme lord of the soil."(1) The king, as proprietor, and as fully entitled to an equitable return for land which he has let, is empowered to punish the cultivator for bad cultivation. "If land be injured

(1) Laws of Menu, Chapter viii. 39. I have here substituted the word *supreme* for the word *paramount*, used by Sir William Jones, which has no meaning but as it relates to the feudal institutions of Europe, and is calculated to convey an erroneous idea.

by the fault of the farmer himself, as if he fails to sow it in due time, he shall be fined ten times as much as the king's share of the crop, that might otherwise have been raised; but only five times as much, if it was the fault of his servants without his knowledge." (On this point Professor H. H. Wilson contradicts the author—see extract from the Bombay High Court Judgment, *infra*). Among other ancient memorials of Hindu institutions and manners, are certain inscriptions engraved on durable materials. Some of them are records of grants of land, commonly to favourite Brahmens; and afford strong indication of the proprietary rights of the sovereign. The sovereign gives away villages and lands, not empty, but already occupied by cultivators, and paying rent.(1) It appears from an ordinance of Yagyawalcya, one of the most sacred of the law sages, that the kings alienated the lands within their dominions, in the same manner, and by the same title, as they alienated any portion of their revenues. On this point, it is of material importance to remark, that up to the time, when the interest of the Company's servants led them to raise a controversy about the rights of Zemindars, every European visitor, without one exception that I have found, agrees in the opinion, that the sovereign was the owner of the soil.

Wherever the Hindus have remained under the influence of their ancient customs and laws, the facts correspond with the inference which would be drawn from these laws. Under the direction of the Governor-General of Bengal, a journey was undertaken, in the year 1766, by Mr. Motte, to the diamond mines in the province of Orissa. In a narrative of his journey, he gives an account of the distribution of the land at Sumbhulpoor, which till that time had remained under the native government. Each village being rated to the government at a certain quantity of rice, which is paid in kind, the land is thus divided among the inhabitants: To every man, as soon as he arrives at the proper age, is granted such a quantity of arable land as is estimated to produce 242¼ measures of rice, of which he must pay 60⅝ measures, or about one fourth to the rajah or king. Mr. Motte adds; "The reserved rent of three or four villages, being one fourth the produce of the land, is applied to the use of the rajah's household. The reserved rent of the rest is given to his relations or principal servants, who by these means have all the inhabitants dependent on them." Dr. Buchanan gives a particular account of the manner in which the crop, in those parts of India which are most purely Hindu, is divided between the inhabitants and the government. In Bengal it is not allowed to be cut down till the rent or tax is first paid: but in those countries to which his journey principally relates, it is the custom, after the grain has been thrashed out in the field, to collect it into heaps, and then to divide it. A heap generally consists of about 110 Winchester bushels, of which he presents the following distribution as a specimen of the partition which is usually made. For the gods, that is, for the priests at their temples, are deducted five seers, containing about one-third of a Winchester gallon each; for charity, or for the mendicant Brahmens, an equal quantity; for the astrologer and the Brahmen of the village, one seer each; for the barber, the pot-maker, the washerman, and the Vasaradava, who is both carpenter and blacksmith, two seers each; for the measurer, four seers; for the Aduca, a kind of beadle, seven seers; for the village chief, eight seers, out of which he has to furnish the village sacrifices; and for the accomptant, ten seers. All these perquisites are the same whatever be the size of the heap beyond a measure of about twenty-five Winchester bushels. When these allowances are withdrawn the heap is measured; and for every candaca which it contains, a measure equal to 5 $\frac{1}{20}$ Winchester bushels, there is again deducted half a seer to the village watchmen, two and a half seers to the accomptant, as much to the chief of the village; and the bottom of the heap, about an inch thick, mixed with the cow-dung which in order to purify it had been spread on the ground, is given to the Nirgunty, or conductor of water. These several deductions, on a heap of twenty candacas, or 110 Winchester bushels, amount to about 5¼ per cent. on the gross

(1) See a royal grant of land, engraved on a copper plate, bearing date twenty-three years before Christ. . . .It is here remarkable that the sovereign, as well as the proprietary, rights are given away; so indissolubly were these united in the minds and institutions of the Hindus.

produce. Of the remainder, 10 per cent. is paid to the collectors of the revenue, as their wages or hire; and the heap is last of all divided into halves between the king and the cultivator.(1)

From these facts only one conclusion can be drawn, that the property of the soil resided in the sovereign; for if it did not reside in him, it will be impossible to show to whom it belonged. The cultivators were left a bare compensation, often not so much as a bare compensation, for the labour and cost of cultivation: they got the benefit of their labour: all the benefit of the land went to the king.(2)

* * * * *

The rate established in the ancient ordinances has been regarded as evidence of mild taxation, that is, of good government. It only proves that agriculture was in its earliest, and most unproductive state; and though it paid little, it could not afford to pay any more.(3) We may assume it as a principle, in which there is no room for mistake, that a government constituted and circumstanced as that of the Hindus had only one limit to its exactions, the non-existence of any thing further to take. Another thing is certain, that under any state of cultivation, but the very worst, if the whole except a sixth of the produce of a soil, so rich as that of Hindustan, had been left with the cultivator, he must have had the means of acquiring wealth, and of attaining rank and consequence; but these it is well ascertained that the ryots in India never enjoyed.(4)

Notwithstanding these proofs that the ownership in the land was reserved to the king, this conclusion has been disputed, in favour, 1st, of the Zemindars, and 2ndly, of the Ryots. The question with regard to the Zemindars may be reserved till that period of the history, when it was agitated for the sake of practical proceedings on the part of the government. The question with regard to the Ryots belongs peculiarly to this part of the work.

The circumstances, which appear to have misled the intelligent Europeans who have misinterpreted this part of the Hindu institutions, are two; first, the tenure of the ryot or husbandman; and secondly, the

(1) Buchanan's Journey through the Mysore, &c. i. 2, 3, 130, 194, 265. "This simple mode of rating lands for half their yearly produce is derived from the remotest antiquity in different parts of Hindostan, and still invariably prevails in such countries as were left unsubdued by the Mahomedans, like Tanjore, where the ancient Indian forms of administration are, for the most part, preserved entire." British India Analysed, i. 195.

(2) The Missionary Dubois, with his singular opportunities of correct information, says peremptorily: "Creditors can have no hold on the real estate of their debtors, because the Hindus have no property in the soil. The lands which they cultivate are the domain of the prince, who is the sole proprietor. He can resume them at his pleasure, and give them to another to cultivate. Even the huts in which they live, built of mud and covered with thatch, are not their own. All belongs to the prince; and if a man, for any reason whatever, quits his habitation in the village, he can by no means dispose of it to another, although it were constructed by his own hands. The only property they possess is their few cows and buffaloes; and upon these no creditor is allowed to lay his hands; because, if deprived of his cattle, he would be unable to cultivate the land; whence an injury would accrue to the prince." Description, &c. of the People of India, by the Abbé Dubois, p. 496.

(3) By the same rule, the Turkish government would be ranked as excellent. It takes little: but the reason is, there is nothing more which it can take. The ancient assessment on the cultivator in Persia was one-tenth; but in the days of the Indian Emperor Akbar, he was by one means or other made to pay more than a half. Ayeen Akberry, Ed. in 4 to p. 348.

(4) The population in India, through so many ages, must have been kept down by excess of exaction. Even in the richest parts of India one-half of the soil has never been under cultivation.

humane and honourable anxiety, lest the interest and the happiness of the most numerous class of the population should be sacrificed, if the sovereign were acknowledged as owner of the soil.

But, if this acknowledgment were ever so complete, it is inconsistent neither with the tenure which is claimed in favour of the ryots, nor with the means of their prosperity and happiness. And if it were, the acknowledgment of its previous existence would be no bar to a preferable arrangement; since the sovereign can have a right to nothing which is injurious to his people.

In a situation in which the revenue of the sovereign was increased in proportion to the number of cultivators, and in which a great proportion of the land continued void of cultivators, there would be a competition, not of cultivators for the land, but of the land for cultivators. If a ryot cultivated a piece of ground, and punctually paid his assessment, the sovereign would be far from any wish to remove him, because it would be difficult to supply his place. If the ryot sold the ground to another ryot, or left it to a successor, that is, put another in his place who would fulfil the wishes of the sovereign, he, whose source of fear was the want of a cultivator, had still cause for satisfaction; and seldom, if ever, interfered.

By custom, the possession of the ryot became, in this manner, a permanent possession; whence he was not removed except when he failed to pay his assessment or rent; a possession which he could sell during his life; or leave by inheritance when he died. As far as rights can be established by prescription, these rights were established in India in favour of the ryots. And no violation of property is more flagrant than that by which the tenure of the ryot is expunged.

But, according even to European ideas, a right to cultivate the land under these, and still greater advantages, is not understood to transfer the ownership of the land. The great estates in Ireland, for example, let under leases perpetually renewable, are vendible and inheritable by the leaseholders, without affecting the ownership of their lords; subject, moreover, to a very important restriction, from which the sovereigns in India were free; the lords of such estates cannot raise their rents at pleasure; the sovereigns in India enjoyed this privilege, and abused it to excess. The sovereigns in India had not only the ownership, but all the benefit of the land; the ryots had merely the privilege of employing their labour always upon the same soil, and of transferring that privilege to some other person; the sovereign claimed a right to as much of the produce as he pleased, and seldom left to the ryots more than a very scanty reward for their labour.

That ownership in the land justified this extent of exaction, or implies a valid title to any power at variance with the interests of the ryots, is an erroneous inference. Without violating its obligations to the people, a government cannot spend any sum, beyond what is strictly necessary for the performance of the services, which it is destined to render: and it is justified in taking even this sum exclusively from the cultivators of the land, only if that is the mode in which all the qualities desirable in a financial system are the most completely realized.

Those who contend for the privileges of the ryots would no doubt observe, that in this mode of interpretation, we reduce the ownership of the sovereign to an empty name; and that to the admission of it, thus understood, they see nothing to object. The controversy is then at a close. The ownership of the sovereign in the soil, wherever it exists, is, by the principles which constitute the very foundation of government, reduced to the limits above described. And it is no less certain, that all which is valuable in the soil, after the deduction of what is due to the sovereign, belongs of incontestable right to the Indian husbandman."

1814 H. H. Wilson: *The History of British India. In his edition of Mill's History of British India, Professor H. H. Wilson comments on the History as having "defects occasioned by incomplete materials" and as presenting "inaccuracies both of fact and opinion" and in his continuation of the History, Volume I, page 294, Edition of* 1858, *he writes:—*

"The demand made by the Sovereign has been commonly referred to his character of proprietor of the soil. It has been maintained that it is by his permission only, and with his sanction, that the land is occupied, and that the occupant sows his seed and reaps his crops; that whatever produce is in excess of the bare subsistence of the cultivator and cost of cultivation, is the property of the king; that it is rent, not revenue, to which he is entitled, *for he is the one universal landlord; that this is the* character in which the sovereign appears in the laws and institutions of the Hindus, in the laws of the Mohammedan conquerors of India, and in the practice of all modern native governments, and in which he is recognised universally by the people.(1)

Notwithstanding the positiveness with which it has been affirmed that the proprietary right of the sovereign is indissolubly connected with the ancient laws and institutions of the Hindus, the accuracy of the assertion *may be reasonably disputed. In adducing the authority of Hindu* writers in favour of the doctrine, two sources of fallacy are discernible. No discrimination has been exercised in distinguishing ancient from modern authorities; and isolated passages have been quoted, without regard to others by which they have been qualified or explained. (2) If due attention had been paid to these considerations, it would have been found that the supposed proprietary right of the sovereign is not warranted by ancient writers; and that, *while those of later date seem to incline to its* admission, they do not acknowledge an exclusive right but one concurrent with the right of the occupant; they acknowledge a property in the soil, not the property of the soil. In the older jurists, we find, indeed, the right of kingly power over the whole earth asserted: and the right is based, with every semblance of historical truth, upon conquest: but there is no attribution of ownership to the king, nor is there any trace of a

---

(1) See Mill, History of India, i, 212, and notes; also Grant's Reports on the Northern Circars and the Revenues of Bengal; and the Minute of Lord Cornwallis, Fifth Report, App. 473. Colonel Munro says, "Nothing can be plainer than that private landed property has never existed in India except on the Malabar coast."—Revenue Sel. i. 94. And the Board of Revenue observe, "We concur with Colonel Munro in thinking that Government is virtually the proprietor of the soil."—Ibid. 486. Such also is Mr. Fortescue's opinion with respect to the Western provinces; and at a long subsequent date, "As to the proprietorship, my belief is, that the Government is the proprietor of the land, and that the person occupying it is well satisfied with the occupation, paying the rent."—Lords' Committee, 1830, Evid., Question 511. And on the opposite side of India, Colonel Barnewall asserts that the people in Guzerat claim no property in soil. Government is vested with the property in the lands; and, as landlord, entitled to the rent, or a share of the produce equal to it.—Commons' Committee, 1832, Evid. 1755.

(2) As observed by Mr. Mill, i. 213 and note, the Digest of Hindu Law compiled by the desire of Sir William Jones, and translated by Mr. Colebrooke, favours the proprietary right of the sovereign, particularly *in* stating, that, if no special engagement for a term of occupancy has been made, the occupant may at any time be dispossessed by the Raja in favour of a person offering a higher revenue.—i. 461. Colonel Wilks accuses the Pundits, who compiled the Digest, of falsifying the law; but the charge is undeserved. The original passages of the Digest are not the law, they are the opinions of the compiler as to the meaning of the law; and it is open to anyone to contest or admit the interpretation according to the purport of the ancient texts, which are also given. It is also necessary to collate this passage with what follows; it will then be found that Tarka-Panchanana, the compiler, does not deny proprietary right in the subject, he only infers the co-existence of concurrent rights: "There is property," he says, "of a hundred various kinds in land": and, when treating of sale without ownership, he observes, "The property is his who uses the land where he resides, and while he uses it; and thus, when land belonging to any person is sold by the king, it is sale without ownership."—i. 475. The sale is illegal.

royal property or estate.(1) *Proprietary right is vested in the individual* who first clears and cultivates the land; it is therefore referred to colonisation; a source which, as regards India and the Hindus, is probably in a great degree historical. The king *may occupy* unclaimed or uncultivated lands, as well as a subject; he has no preference: if he appropriates them, *he must give away half to the Brahmans; if they are appropriated* by a subject, the king claims only the share of the produce assigned to him by law. Concurrent and not incompatible rights and claims are thus clearly recognised; and the king's dues are based, not upon any indefeasible right of property, but in the first instance upon conquest, and in the second upon protection.

The notion of the *proprietary right of the sovereign* is rather of Mohammedan than Hindu origin. The doctrines of the Mohammedan jurists are somewhat at variance on this matter. Those who *belong to* the school which has been chiefly followed in India, maintain the right of individual ownership: yet they do so with considerable reservation, for they restrict the *appropriation of all uncultivated land to the king; assign* to him the property of all except arable land; authorise him to dispossess any *occupant who neglects to cultivate his land, and transfer it to* another; (2) and entitle him to claim the whole of the net produce of cultivation. Other Mohammedan lawyers assert unequivocally, that in all conquered countries, and India is in their estimation a conquered country, although the inhabitants may be suffered to retain the occupancy of their

---

(1) The texts of Menu, which have been cited in proof of the proprietary right of the Raja, *have been misunderstood. In B. viii. v.* 39, the phrase rendered by Sir W. Jones "lord paramount of the soil," is Bhumer-adhipati, supreme ruler of the earth: the title Adhipati, "overlord," *no more implies ownership* in this text than when it is used to denote the head-man of a village, Grámádhipati; or governor of a district, Désádhipati. In another text, *in which the authority of a king is intimated* to be analogous to that of a husband over a wife, the sources of property in subjects are also enunciated: "Ancient sages have *called this* earth (Prithivi) the wife of Prithu; they have called the field his who has cut down the thicket; the wild beast his whose shaft has slain it."—B. ix. v. 44. The subjection of the earth by Prithu is clearly an allegory of its conquest by the military caste, see Vishnu Purana, p. 103. The compiler of the Digest expressly states that *the king's proprietary right is "denied* by some, because Menu has only declared that subjects shall be protected by the king."—i. 471. Menu then, even according to the Pundits, is not authority for this doctrine. Another ancient lawgiver, Yajnawalkya, is quoted in the Digest to show that the king has no particular property even in unclaimed or *uncultivated* ground; *if a subject choose, he may occupy it* without leave, giving the Raja his due.—i. 461. Another writer of antiquity, Jamini, the author of the Mimansa, also denies the king's ownership: "The kingly power is for the government of the realm and the extirpation of wrong, and for that purpose he receives taxes from husbandmen and levies fines from *offenders; but the right of property is not thereby* vested in him, else he would have property in house and land appertaining to the subjects abiding in his dominions. The earth is not the king's but is common to all beings enjoying the fruit of their own labour."—Colebrooke on the Mimánsá Philosophy, Trans. Royal Asiatic Society, i. 458. Mr. Elphinstone *justly* concludes, *from the Hindu laws on this subject,* that as the king's share was limited to one-sixth, or at most to one-fourth, there must have been a *proprietor* for the other five-sixths, or *three-fourths,* who must obviously have had the greatest interest of the two in the whole property shared.—History of India, i. 42.

(2) The Hindu law, as it appears in Menu, does not go this length: it provides only, that, in case of neglect to cultivate, the owner shall be fined ten times the *amount of the king's share, if his own fault;* five times, if that of his servants.—B. viii. v. 243. There is not a word of confiscation or transfer.

lands, the property of them is vested in the sovereign.(1) *It is apparently* to these doctrines, to the long continuance of Mohammedan domination *over a large portion of India, and to the influence* which it indirectly exercised over the states that remained subject to Hindu princes, that the notion of the proprietary right of the sovereign owed its general and popular acceptance.

For upon whatever system of law that impression was founded, and whether erroneous or just, there is little reason to doubt that in later times, at least it has *prevailed very widely amongst the people,*(2) and regulated the practice of the native governments. This gives the question its importance. *Abstractedly* considered, it signifies but little whether the king be called the lord of the soil, or by any other title; but, when in this capacity he superseded all other rights, it became no longer a matter of mere speculation. Acting upon this principle, the *native rulers required* that a formal grant should legalise the occupation of all waste land, and sequestrated estates of *which the cultivation* was neglected or the revenues unpaid: fixed at their pleasure from time to time the proportion of the produce which the occupant was to pay, claiming indeed the whole of the net produce as the rent; and turned out actual occupants in favour of others offering a higher amount of payment. The almost universal practice of recent times transferred these *rights and powers to contractors* and farmers of the revenue, from whom the prince exacted as much as he *could obtain,* and then left them at liberty to extort all they could, and by whatever means they could, from the people. His right to do so was not questioned, but its exercise through such instrumentality was resisted where resistance was thought likely to succeed; and the *consequences of* the system were such as might have been anticipated—the decline and *disorganisation of the country.*

The *proprietary right* of the sovereign derives then no warrant from the ancient laws or institutions of the Hindus, and it is not recognised by modern Hindu lawyers as exclusive, or incompatible with individual ownership. It is the doctrine of one of the schools of Mohammedan law; *it has* influenced the practice of the later native governments, and it had obtained a very general belief *among the people.* The popular belief was, however, modified by the remembrance of original rights and the remains of primitive institutions; and while in theory the people admitted the right of the prince to the lands they tilled, yet in practice they very commonly regarded them as their own as long as they paid to the sovereign his undisputed share of the produce. *Unhappily for them, this* share was of late rarely regulated by any other standard than their ability to comply *with the exactions of their rulers.*"

---

(1) Galloway on the Law and Constitution of India, page 101. According to this writer, a high authority in matters of Mohammedan law, the school of Abu Hanifa was that which was chiefly followed in *Hindustan; and* this jurist affirms that in conquered countries the people paying the legal impost preserved *their proprietary rights.* General Galloway also states that this is denied by the Shafia and Malikia schools; according to which *the lands,* although retained by the people, become the property of the sovereign.—Ibid, 45. It is worth observing, that all the authorities cited by Mill, i. 214 note, with exception of Diodorus and Strabo, whose testimony is not entitled to very great deference, *derive their opinions* from their observation of the state of things under the Mohammedan governments.

(2) The belief of Mr. Fortescue with regard to the opinions of the people of the Western provinces has been already cited—note, page 295. The Abbé Dubois is a good representative of the popular *notions prevailing in* the Dekhin, and he says, "The lands which the Hindus cultivate are the domain of the prince, who is sole *proprietor:* he can resume them at pleasure, and give them to another to cultivate."—Description of the People of India, p. 496. The author has heard the same sentiment expressed repeatedly by well-informed Hindus from the Upper provinces. They have admitted the full right of the Government to dispossess any occupants whatever, although, if the customary demands were paid, *such act* would be considered harsh and oppressive. In Bengal the notion has probably been effaced by the *Company's regulations:* the Zemindars have been taught a different lesson.

1823 Sir THOMAS MUNRO *on his Tour in the Northern Sirkárs and Nellore: published in Sir Alexander J. Arbuthnot's 'Major-General Sir Thomas Munro', page 204 of the edition of 1881.*

General remarks on the Northern Sirkars. Fulness and accuracy of the information furnished regarding them by the Committee of Circuit.

"Although the Sirkárs are our earliest possessions, there are none, perhaps, of which we have so little accurate knowledge in everything that regards the condition of the people. Little or nothing has been added to the information given, forty years ago, by the Committee of Circuit. By being so much nearer to the time of the conquest of these districts, they had the advantage of communicating with many of the local officers and inhabitants who had lived under the native Government, and they had thereby a better opportunity than we now have, of ascertaining what had then been the rights of the different classes of the people, and the rules and customs by which the public revenue was secured. They had not themselves been brought up under any particular system of internal administration, and were therefore more likely than their successors to examine what they saw without partiality. The revenue system in the Sirkárs, as described by them, has a general resemblance to that of many other provinces of India. The people had no property in land; they were poor in their appearance, and oppressed."

1824 Sir THOMAS MUNRO: *Minute on the depressed condition of the Ballari district, consequent on the triennial and decennial leases: published in Sir Alexander J. Arbuthnot's 'Major-General Sir Thomas Munro', page 234 of the edition of 1881....The extract relates to the report on the settlement of the district for Fasli 1232.*

His misapprehension of the true position of the ryot.

"The Collector looks upon the ryot as a mere tenant, and hence he infers that the occupation of land in India may be regulated as in England. But the station of the ryot is not so low as it is made by his plan. The ryot is certainly not like the landlord of England, but neither is he like the English tenant. If the name of landlord belongs to any person in India, it is to the ryot. He divides with Government all the rights of the land. Whatever is not reserved by Government belongs to him. He is not a tenant at will, or for a term of years. He is not removable because another offers more. The case, it is true, sometimes happens, but it is always regarded as one of injustice. He holds his land or putkutt, by inheritance, as long as he pays the public assessment upon it. That assessment has, under the native princes, always fluctuated, and been a great bar to improvement. It is our object to limit the demand upon his land, to secure him in the possession of it, and thus to render it a valuable property."

Sir THOMAS MUNRO: *Minute dated the 31st December 1824, in Gleig's "The life of Sir Thomas Munro", Chapter XV, page 229.*

"Opinions respecting the ancient state of landed property in India are various, in consequence of our ignorance of it. The knowledge of it is, however, only useful in so far as it may serve to throw light on its present state, and to aid us in finding the way for improving it. There is no reason to suppose that private landed property ever, at any one time, existed upon the same footing over the greater part of India. From Pulicat to Ganjam, in the Ceded Districts, the Baramahl and Coimbatore, it seems to have been always, as now, little known, except as enam from the sovereign. Along the Malabar coast, and above the western Ghauts, from Soondah to Wynaud, it seems to have existed from a remote period as now almost universally, and in the Carnatic, Tanjore, and Madura. In all these provinces it is important to recollect, that when they first fell under the British dominion, the land, whether private property or Circar, was held in small portions by a great body of petty owners immediately of the princes, the Poligars of the south. The modern Zemindars of the northern Circars, whom the Company allowed to retain the districts which they had rented or managed under their native sovereign, and the old Hill Rajahs of that country, form no exception, as they were, in fact, petty princes, in whose districts the land was in the hands of small occupants, as in those of the Circar."

Colonel GALLOWAY: *Observations on the Law and Constitution of India, published in 1825, pages 26 to 141.*

"To the Moohummudan law, . . . the question of *law*, with respect to the second branch of our inquiry, must be referred, *viz.* What is the nature of landed tenures under a Moohummudan government; more particularly, what is the nature of such tenures under a Moohummudan Huneefeeah government? For it was and is the law of the Huneefeeah sect of Soonnee Moslems which, it is universally admitted, prevailed in India.

In whom does the real and indefeasible right of property in the lands of Bengal rest? In the *sovereign*, or in the *zumeendar* or in the *cultivator?* This is a question which has puzzled, in no small degree, the gentlemen "versed in India affairs."

The learned body (Edinburgh Reviewers) to which I have referred, rest the whole question upon this:—Are these zumeendars, *by the laws of the country*, the proprietors of the soil? And all must admit that they are right so far; that the law of the country must decide the point: for to what other tribunal can such a question be referred?

It is my intention, believing that I have shewn what law is the law of the country, to point out what that law says on the case.

But before proceeding to discuss a question of this nature, it is necessary we should define what we understand to be the meaning of the terms which are important in it: the *sovereign*, the *zumeendar*, the *cultivator*.

What is meant by a *sovereign* every one knows; but the learned in the East define him to be that power, than which there is none higher, nor any equal to in a state.

* * * * *

I say the word *Zumeendar* imports nothing more, *necessarily*, than that a relation exists between the person and the *zumeen*, or land. What that relation is, forms part of the subject to be discussed.

The word *cultivator* I understand to mean the person who, by his own labour, or that of his family or of his hired servants, causes the ground to produce, and reaps the crop; who receives no wages, who has not hired the land, neither borrowed it from any one; or at least, that there is no record or tradition, or any existing evidence of his having done so. These are the significations I would be understood to give the terms defined.

* * * * *

But it will be said this cultivator *gives* something to another, in name of the lands which he holds, and therefore *he* cannot be the real owner; for *paying* is an acknowledgment of a superior, and the act of a vassal. I apprehend that this is a feodal idea, and that necessarily it has no real foundation. Let it be remembered, that *paying* for an equivalent, as in a purchase and sale or in discharging a debt is exchanging one commodity for another; that *paying* or *giving without* an *equivalent*, is an act which rather denotes *superiority* in the *giver;* and that only when it is to appease and to avert an evil, which we dread, is giving indication of inferiority.

But admitting that the giving of something by the cultivator is an acknowledgment of a right existing in another, we shall find that all the claimants, from the cultivator to the sovereign, are equal in this respect. To whom does the cultivator pay? To the Zumeendar. But does this constitute him the proprietor? Certainly not. If the Zumeendar were actual owner of the lands from which the something is paid, it is clear that he might either retain what he receives or give it to whom he pleases; because the right to the proceeds of actual property must be indefeasible, like actual property itself. But we find, on the contrary, that the Zumeendar, in name of those very lands, must pay either all or part of what he receives, also, to another; in this point of view, then, his right is not stronger than that of the cultivator: he receives from one and pays to another; and, therefore, can only be deemed a channel through which the produce of the soil flows from the cultivator to the public treasury of the sovereign. But even here it does not rest. Though we cannot so easily trace it, yet its transmission through the sovereign for the exigencies of the state, is no less certain than through the channel by which it flowed to him. If this be true, then it follows that *payment* is as little a test of vassalage as receipt is a proof of property.

For whose benefit, then, does this channel flow which *contains the* produce of the soil? *Unquestionably* for the benefit of the *people.* All contribute towards relieving the public wants, all enjoy their share of public prosperity. Some give their aid in one way, some in another. One man serves the state in person, one gives so much from his land, another gives so much from his flock; and it would appear as reasonable to say that the sheep producing wool or lambs are *not the property of him* who contributes a lamb or a pound of *wool* (or their equivalent in money), as that the land producing wheat or barley is not the property of *him who contributes a* bushel of wheat, or a measure of barley, or an equivalent in money.

But as by the Moohummudan law the sovereign is considered only the trustee of the people, we must identify them. The *people*, by law, claim only a *portion* of the *produce of the soil* as their right; and as no trustee *can have* a stronger claim than his constituent, the right of the *sovereign* must also be limited *to a portion* of the *produce*, and a right *in* the *produce* is not a right in the soil.

And with regard to the Zumeendar, who resembles the sovereign merely in *receiving* and *paying*, if the right of the sovereign *on these grounds* (of receiving and paying) may not *be admitted* to the soil, that of the Zumeendar must fall of course; for since we have seen that both are *merely instruments*, or channels, through which its produce is collected, both claiming on the same grounds, if the *greater* fall the lesser cannot stand.

This seems the *natural state of the* case, and of the rights of the parties *claimants.* Let us see how far it is conformable to the law of the land; and if historical facts should correspond, the corroboration will be *so* far at least satisfactory.

*   *   *   *   *

India was conquered by the Moslems by force of arms. If so, by law, the land must either have been partitioned *among* the conquerors: in which case every individual who bore arms would be entitled to an equal share without respect to rank, but a horseman to *double the share of* a foot soldier, and the land would be *subject* to a tenth of its produce, and thence termed *ooshree*, or tithe land, from *ooshr* عشر tenth: or it must have been settled on the conquered inhabitants, and the *Khurauj*, or land tax, imposed on their lands, and the *Jizeeah*, or capitation tax, on their heads, as the Moohummudan *lawyers* express themselves.

If, then, the land had been divided among the troops, no one who is not a Moslem, *or who has not* purchased from a Moslem, or received by some *other legal* mode of conveyance, can be lawful proprietor of land. I say conveyance; for it could not descend by inheritance from a *Moslem to* a Hindoo or other non-Moslem. There is *no inheritance* between a Moslem and an unbeliever. The Hindoos admit of no proselytes; and if they did, by the *Moohummudan* law the crime of apostasy would occasion forfeiture of property. If the land were settled on the inhabitants, as was done when the Moslems conquered the *Súwaúd* of Erauk, Syria, *and Egypt, the land* would be termed *Khuraujee*, *or subject of the Khurauj;* and the law regarding it would be as follows.

"The land of the *Suwaud* of Erauk is the property *of its inhabitants.* They may alienate it by sale *and* dispose of it as they please; for when the Imaum conquers a country by force of arms, if he permit the inhabitants to remain on it, *imposing the Khurauj* on their lands and the *Jizeeah on their* heads, the land is the property of the inhabitants; and since it is their property, it is lawful for them to sell it, or to dispose *of it as they choose.*"—*Surauj-ool Vuhaul.*

The word *Khurauj*, and almost all the other revenue, judicial, and financial terms, remaining in use at this day in India, throw some light on the subject. *La Khurauj* (or as it is more generally *written Lackerage*, is one of those, and denotes a right *in* the sale, "without any impost." The word is لا خراج not subject to *khurauj. Khurauj* خراج from خروج khurooj "to come out of," or "be out," Hebrew מרר *khuruj*, "*coming* out of a narrow place."—Psalms xviii, verse 45.

The meaning of the word Suwaud سواد of Erauk, is "the lands of the province," as the same author informs us; adding, that this province is called *Suwaud* "on account of the verdure of its trees and of its cultivation." *The* Hebrews have שד *sud*, also שדה *sudah*, "land, the ground". The word in the above quotation translated "property" is in the original ملك *milk*, which in law signifies indefeasible right of property; and the word rendered "inhabitants" is in the original اهل *ahl*, the import of which is simply that of dwelling, residing on the lands; as they say, اهل البصرة *ahl-ool-busrah*, the inhabitants of Busrah.

From this we see, that if the inhabitants of India were suffered to remain on their lands on paying the above impost, the right of property in the sovereign is gone at once; and if it was partitioned among the conquerors, the alienation is equally complete. The question at issue, therefore, is shortened by one claim at least. But, in order to determine the other two claims, we must see what persons are meant by the *ahl*, who are thus vested with indefeasible right of property: for it may be said that these were the *former proprietors* of the soil, and that, by this settlement, is meant merely *a confirmation* of *former rights.* But that this is not the case, it is only necessary to know that, by the Moohummudan law, when a Moohummudan army conquers a province by force of arms, every *right* and interest which the conquered inhabitants before possessed ceases and determines, by the very act of conquest: that the sovereign has, by law, the power even of *carrying the* conquered inhabitants into captivity, and reducing them to slavery, or of suffering them to remain free as *Zimmees*, as was done with the inhabitants of Erauk, abovementioned; or of removing the former inhabitants, and placing another people in it, as zimmees. By suffering the *ahl*, the inhabitants, however, to remain *under the conditions required by law, viz., as zimmees,* and to pay the *khurauj* and capitation tax, the property of the soil is *established* in them, not *continued.*

But who are the *ahl* here spoken of? This is the only question now remaining: and I answer, it will appear that they are those who cultivate the land. They, the *cultivators*, pay the *khurauj*, and are termed رب الارض *rubb-ool arz*, or masters of the soil. This would be sufficiently apparent *merely* by attending to the circumstance above related, *viz.* that the Imaum, when he conquers an infidel province, has the power of removing the *ahl* or former inhabitants, and of placing another *people in it as zimmees.*

*   *   *   *   *

The truth is, that between the sovereign and the *rubb-ool arz* رب الارض (who is properly the cultivator), no one intervenes who is not a servant of the sovereign: and this servant receives his hire, not out of the produce of the lands over which he is placed, but from the public treasury as is *specially mentioned* by every lawyer.

*   *   *   *   *

On the whole, then, according to the Huneefeeah law, if a Moslem army conquered a non-Moslem province or kingdom by force of arms, and the conqueror *chose to suffer* the inhabitants to remain in it, his duty would be, either himself, or by commissioners (as Omr did in settling the khurauj of the province of Erauk), *to partition* the lands among them, and to fix the land-tax. Those who share in this partition are the proprietors of the soil for ever; and may not be disseised of it, without their consent, so long as they pay the land-tax.

The above is the Moohummudan law on the question. I shall now notice a few historical facts connected with it. The reader must, however, avoid an error into which many have fallen, *viz.* that of confounding the law of the different sects of Moohummudans. The error is equally great, as quoting the law of France would be to prove the nature of tenures in England, *because* both the French and English are Christians, and the laws of both nations have the same origin.

The Moohummudan law has been brought forward by the disputants who favour the claim of the sovereign and of the cultivator, in support of their doctrine. The Edinburgh Reviewers think they have destroyed the *opinion* of Sir William Jones, and made that celebrated oriental scholar and lawyer hide his diminished head, by quoting the law of the *Sheeah Persian* (on the authority of Ibn Haukal and Sir William Ouseley), to prove that of the *Soonnee Moghul*. They are polite enough, indeed, to suggest an apology for Sir William Jones; but I will tell them that, on the subject of either Moohummudan or Hindoo law, that amiable, philanthropic, and learned Judge, was less likely to be misinformed than on any other point of oriental research; for it was, above all others, the chiefest object of his pursuit to make himself master of these codes; his highest ambition, as he everywhere tells his friends, to superintend the compilation of, and translate digests of Moohummudan and Hindoo law for the use of the judges, "to enable them to control and to check the opinions of the native law officers," which digests he declares to be "indispensable to the due administration of justice to our Asiatic subjects;" and in his endeavour to attain this object he ultimately sacrificed his valuable life.

* * * * *

But before I have done with the Reviewers, I must take notice of another of their "proofs." Shere Khan, before he usurped the throne of India, on the occasion of a dispute between him and his brothers about their father's *jageer*, when it was proposed to partition it, replied "that there were no hereditary estates in India among Moohummudans, for that all lands belonged to the King, which he disposed of at pleasure." This the Reviewers quote, leaving us to believe it the authority of the India historian; while, in fact, it is nothing more than an anecdote, or at most the opinion of Shere himself, who though a very good soldier, was probably not a very profound constitutional lawyer. But this is not all. The land in dispute was a "*jageer*"; which, in fact, by the Moohummudan law is *not* hereditary: and besides, it so happened, that Shere's opinion here is liable to great suspicion; for he had himself privately got a grant of the jageer from the king. He says, indeed, "that as he himself had got a personal grant of his estate, his brothers were out of the question; but he would give his brother Soleyman a part of the money and moveables, according to law."

It so happened in India, that there was infinitely more arable land than there were husbandmen to cultivate. The wants of the husbandman were few, those of the state many. The interest of the sovereign was, therefore, greater to encourage cultivation, than of the cultivator to take the grant and to cultivate. Thus the value of landed tenures in India being extremely small to the ryot, they probably seldom became matter of dispute, or afforded much room for legislation. We ought, consequently, to expect to find in the law, and in the political, fiscal and financial regulations, handed down to us, more of the nature of encouragement from a landholder to cultivate the soil, than of definition of landed tenures so little valued. We accordingly see their wisest princes exert their utmost endeavours to protect the cultivator and to encourage cultivation. "Let the Amelguzzar," says Akbar, "learn the character of every husbandman, and be the immediate protector of that class of our subjects. Let him endeavour to bring the waste lands into cultivation, and be careful that the arable lands are not neglected. Let him promote the cultivation of such articles as will produce general profit and utility; with a view to which he may allow some remission from the general rate of collection. If a husbandman cultivate a less quantity of land than he engaged for, but produces a good excuse, let it be accepted. Let him (the Amelguzzar) give no cause for disgust; but, on the contrary, let him (the Amelguzzar) transact his business with each husbandman separately, and see that the revenues are demanded and received with affability and complacency." And again, "let him agree with the husbandman to bring his rents himself, that there may be no plea for employing intermediate mercenaries. When a husbandman brings his rent let him have a receipt for it signed by the treasurer."

Where so much encouragement was required to take lands and cultivate them, we can hardly expect to see much on the law of ejectments. But here we see nothing at all: and although the Moohummudan law, which declares the property of lands to vest in the cultivator, allows the sovereign to eject a cultivator who does not cultivate, and give his lands to another, yet there is not a single word on that head in the whole of the instructions of Akbar to his revenue, or judicial, or fiscal officers. No, the soil was the property of the cultivator as much as it could be. Law gave no power, policy gave no motive to remove him or to disturb him, so long as he paid his taxes. When he did not, his lands could be attached; and so can those of the first *peer*, holding by the firmest tenure of the English law.

The right of the Indian husbandman is the right of possession and of transfer; and the rate of his land-tax was fixed; often, indeed, the amount. In what respect, then, is his right of property inferior to that of the English landholder? I answer, instead of the *rate*, the *amount* of *part* of the land-tax of the English landholder is *always* fixed, and so far he has the advantage. I say "part", for his land is subject to tithes and to poor's rates, which are only rateable, as the *whole* of the land-tax was in India. And we have lately seen, that in some parts of England so burthensome were the imposts of tithes and poor's rates, that the value of landed tenure was in reality as little there as it could ever have been in India. At the period I allude to, in some parts of England no *cultivator* (that is, farmer) could be found to take the land and to cultivate, paying the poor's rates and tithes, the English *khurauj*.

Had this state of things continued and become general in England, government must either have relinquished the revenue leviable from lands, or have confiscated such lands; and all this by the laws of England, to pay the revenues of the state: and having done so, they must have employed their officers to give the lands to cultivators and to collect the land revenue, the *khurauj*. Whoever should have witnessed this state of things, and knew no better, might well have said, "all the lands of England belong to the king," &c., as those our India historians, ignorant of the Moohummudan law, have said of India.

* * * * *

But to proceed. Though the law be explicit as to the right of the cultivator, and although it be equally doubtless that the zumeendary right is official; that any given individual may be zumeendar, in the sense in which that word is loosely understood, and also a *malik*, or real owner of the soil, such as I have defined the "cultivator" to be, it is scarcely necessary for me to say, because the original tenure of *milkeeut* being transferable, might be purchased by such individual, and thus a large estate might be acquired: and doubtless many considerable properties thus grew up, and many more were unjustly got possession of. But then the difference between two individuals, claiming, the one as a cultivator in possession of the soil, and the other as a zumeendar, just described, claiming the right of a malik over him, is, that the latter must prove his purchase or lawful acquisition, and that the cultivator-possessor holds as a lessee under him; for the law has vested the original or radical right to the soil in the cultivator. Of this right no individual can divest himself legally, but by sale or gift; and no individual can acquire it from him, but by gift, purchase, or inheritance. The sovereign may grant to his favourite a sunnud of zumeendary, or jageerdary, or altumghadaree over the lands, and the grantee will draw the government revenue, the *khurauj;* but the property of the soil remains with the owner, the *malik*, who may nevertheless sell, or let, or give it to whom he pleases.

* * * * *

There are instances of the sovereign purchasing land from a zumeendar. On this point Gholam Hoseyn is asked: Q. "Why did the king purchase lands, since he was lord of the country, and might therefore have taken by virtue of that capacity?" A. "The emperor is not so far lord of the soil as to be able, consistently with right and equity, to sell or otherwise dispose of it at his mere will and pleasure. These are rights appertaining only to such a proprietor of land as is mentioned in the first and second answers. The emperor is *proprietor of the revenue*, but *he is not proprietor of the soil.* Hence it is, when he grants, *aymes*, *altumghas*, and *jageers*, he only *transfers the revenue* from himself to the grantee."

* * * * *

How far the practice of India coincided with the law, in the system of government generally in matters of revenue and finance, in countenancing the right of the sovereign, or of the zumeendar or of the cultivator to the property of the soil, may be farther seen, in addition to what I have already quoted, by referring to the Institutes of Timour, which are formed so closely on the model and principles of the Moohummudan law, that it is impossible to mistake their origin. The Institutes of Akbar, in the *Ayeen Akburee*, are evidently formed from those of Timour; and are, in fact, in their most material parts, a copy of the former.

* * * * *

But there are other documents extant, of still greater force and of recent date. Among these I shall mention Aurungzebe's firmaun, dated in 1668, directed to Moohummud Hashim, containing instructions for collecting the "khurauj."

(Quotations from these and other documents follow).

"Besides these an infinite number of examples might be adduced, to shew the identity between the regulations of the India Moohummudan government and the Moohummudan law. What I have quoted, however, must be fully sufficient.

Having, as I am persuaded I have, without doubt, established that the Moohummudan law and constitution is the "law and constitution of India;" that the Moohummudan law prevailed during the whole period of the Moohummudan government; that by that law, the right of property in the soil does vest in the cultivator, such as I have above defined, and not in the crown nor zumeendar, above described; that the usages which prevailed, distinctly shew that neither the sovereign, nor the person whom we call zumeendar (not owning land by inheritance, purchase, or gift), was ever understood to have had the shadow of proprietary right in the soil, and that the usages with respect to tenures, taxation, &c., are no where adverse to, but for the most part conformable to the principles and rules of the law in their leading features, I shall now notice the different kinds of tenures or modes, by which property in lands can be acquired, as recognized by the Moohummudan law.

* * * * *

I have already given Lord Cornwallis credit for his benevolent intentions; but I must say, there appears throughout the whole of his lordship's measures a precipitancy, and a want of regard for ancient rights, not easy to be accounted for. This is evident in most of his minutes. I select the following paragraph from that of the 18th September 1789. "Although, however, I am not only of opinion that the zumeendars have the best right, but from being persuaded that nothing could be so ruinous to the public interest as that the land should be retained as the property of government (never dreaming of the claim of the people), I am also convinced that, failing the claim of right of the zumeendars, it would be necessary for the public good, to grant a right of property in the soil to them, or to persons of other description. I think it unnecessary to enter into any discussion of the grounds upon which their right appears to be founded."

An avowal such as this, was evidently beyond the power of the Governor-General. It was evidently contrary to the law enacted by the parliament of England. He was not to *grant rights*, but to confirm them, and " to protect the people in their rights existing." It can, therefore, only be interpreted, as a proof that his lordship did not intend that his benevolence should be restrained, by being guided by any law or right whatever. In fact, he did so act; and the measures adopted at that period have more the appearance of those of a good and well-meaning civilized person, accidentally placed at the head of a nation of savages, passing his first acts of legislation, than of one charged with the government of a people, civilized almost since the infancy of time; the very slaves of method, of rule, of habit, and of their institutions; whose very foibles, even absurdities, deserved consideration, because to them they are neither foibles nor absurdities, but matters of importance. How, then, it so happened that their most sacred, most valuable rights, should have been thus held as nothing, is indeed difficult to conceive. It was a blameable neglect of the interests of the people.

The very first point to be inquired into was the "claim to the soil," the right of property in which was to be confirmed, not granted. Mr. Grant argued in favour of the right of government; Mr. Shore, that of the zumeendar. Lord Cornwallis despises all right, and fairly avows "that he thinks it unnecessary to enter into the discussion of the right to the soil." But the very first resolution of government, framed by his lordship, bound him to make this inquiry; for it says, "resolved, that a new settlement be made *with the actual proprietors of the soil*," &c. Now the act of parliament of 1784 completely recognizes the right of possession of the people, according to the law of India, and that their "tribute and rents" should be fixed agreeably to that law."

In Chancery: Freeman versus Fairlie, reported in Moore's Indian Appeal Cases, volume I, page 342. Judgment delivered by Lord Lyndhurst, Lord High Chancellor of Great Britain. 1828

"The first thing to be considered is, what was the state of landed property among the natives of *India*, when the English settlement was originally established in that country. I am speaking of the district of *Calcutta*. This is certainly involved in some obscurity; but there are two documents, which were referred to in the argument, that throw great light on the subject, and have contributed to remove almost all doubts from my mind with respect to it.

These documents are, in the first place, the Regulations of 1793, distinguished by the name of the permanent Regulations. I think it is to be collected from those Regulations, that the proprietors of land in *India* had an absolute ownership and dominion of the soil; that the soil was not vested generally in the Sovereign; that the proprietors did not hold at the will of the Sovereign; but held the property as their own, with the power of disposing of it absolutely; and, if not disposed of, that it descended to their families. It is liable, indeed, to a tribute to the Government, but it appears that the tribute was not fixed, but was increased at the arbitrary will of the Government; and it appears further, that, if the tribute was not paid, Government had the power of taking possession of the lands for the purpose of obtaining payment. Still, notwithstanding these circumstances, and these charges, I think it is impossible to read those Regulations, which were prepared obviously with great caution and consideration, by persons well acquainted with the subject, and possessing every means of obtaining the most accurate information on it, and as far back as the year 1793, without coming to the conclusions, that the *Zemindars* and *Talookdars* were owners of the soil, subject only to a tribute, such as I have stated, to Government; and it was the object of those Regulations of the year 1793, to make that tribute which had been considered as dependent in its amount on the will of the governing power, fixed and permanent. But I do not rely merely on the Regulations of 1793. I look, secondly, at another series of documents,—the case submitted to the *Sudder Dewanny Adawlut* for their opinion,—and the documents which accompany that case and which were laid before me. Looking at those documents and opinions, which were referred to in the course of the argument, and considered as materials on which the parties relied, and which were annexed, I think, to the certified opinion of *Sir Edward Hyde East;* and considering, with the best attention in my power, these papers, they confirm, most strongly, the opinion I should have derived from the permanent Regulations: namely, that the proprietors of the soil had a permanent interest in it at the time when the English established themselves in that settlement."

Col. J. MUNRO (*Resident at Travancore and Cochin*): *Evidence before the Select Committee of the House of Commons on the Affairs of the East India Company, printed in the Minutes of Evidence, volume VI, page 21. The question and the answer are given below:—* 1832

"227. What was the tenure of land in this country; did the zemindary system prevail?—The tenures are very various; a ryotwar system prevails, in which the most absolute property in the soil is recognised."

1845 **William Erskine**: *A History of India under Baber and Humayun, volume I, page 528 of the edition of 1854.*

Taxes. "We have very imperfect means of knowing what were the taxes then levied. The chief revenue of the state has always in India been a kind of land-tax, which, in the fully settled and quiet provinces, was raised directly on the land; but where the country remained under its native chiefs, or was not fully subdued, was drawn by the Emperor in the shape of an annual tribute.

Landed property in India. The rights of landed property were considerably different from those that prevail in the west. There were two separate and legal rights in the land; that of the ryot or cultivator, who held it by hereditary succession; and that of the government, which could justly claim a fixed share of the produce. Both of these were permanent.

We frequently see the officers of the army or government rewarded by jagirs or estates. But these jagirs were not like our territorial possessions or landed estates in Europe. Though the larger ones implied a jurisdiction both civil and criminal, very much resembling that enjoyed by the greater feudal chiefs during the middle ages, or by barons holding of the crown in Scotland down to the abolition of the heritable jurisdictions in the last century, yet their legal power over the land itself did not extend to a property in the soil, but to the exercise of all such rights as belonged to the government; for instance, that of levying the government's share of the produce, and the government taxes. Though the Musulman conquerors claimed, in theory, an absolute right of property in the soil, the right was in practice restrained, in conformity with the ancient law and usage, to some fixed portion of the produce collected from villages, or smaller zemindars, or separate ryots. Their exactions were indeed often oppressively increased, but the ryot was rarely removed; and he considered the land as his by right, subject to the payment of a certain share of the produce varying according to circumstances. The jagirdar or holder of the jagir, was properly, in Musulman times, merely an officer of government, and removable at pleasure, except where the grant had been made hereditary. The term zemindar, or landholder, is applied by Musulman writers not only to persons who held lands granted by the Crown, but even to the great Hindu chiefs and rajas, who had possessed their lands unrestricted from the remotest times; though the more powerful of these chiefs considered themselves as of right independent, and yielded obedience, not to a law, the existence of which they denied, but to fear or the pressure of a superior force. India, in reality, was rather a congeries of little states under one prince, than one regular and uniformly-governed kingdom. Many of the hill and frontier districts yielded little more than a nominal submission."

Zemindars and tributaries.

1855 *Despatch sent by the Madras Government to the Court of Directors dated 11th October, 1855, quoted in S. Srinivasa Raghavaiyangar's Memorandum on the Progress of the Madras Presidency During the Last Forty Years, page 187.*

"An exact and scientifically accurate classification, distinguishing all the minute variations of composition, quality and fertility of soil, is an operation of extreme difficulty in any country, even with all the aids that can be supplied by a high degree of scientific knowledge, accurate and practised observation, and a trustworthy agency. In this country, all these helps must in a great degree be wanting, and it is the more necessary that the Government should enter on the undertaking in a liberal spirit; and if so entered on, the difficulties will almost wholly disappear. It must be remembered that the right of the Government is not a *rent* which consists of all the surplus produce, after paying the costs of cultivation and the profits of agricultural stock; but a *land revenue only* which ought, if possible, to be so lightly assessed as to leave a surplus or rent to the occupier, whether he in fact let the land to others or retain it in his own hands."

Letter from the Directors of the East India Company to the Governor of Fort St. George, dated December 17, 1856, in reply to the above Despatch of the Madras Government: printed in R. Dutt's Economic History of India—Victorian Age, page 308. 1856

"The officers engaged in the duty of fixing the assessment should always bear in mind that as you have expressed it—'the right of the Government is not a rent which consists of all the surplus produce after paying the cost of cultivation and the profits of the agricultural stocks, but a land revenue only, which ought, if possible, to be so lightly assessed as to have a surplus or rent to the occupier, whether he, in fact, let the land to others or retain it in his own hands.'

We are therefore of opinion that the assessment should be proportioned to the *nett*, and not to the *gross* produce."

J. S. Mill: *Memorandum of the Improvements in the Administration of India, quoted in Sir John Strachey's India, Its Administration and Progress, page 134.* 1858

"A large portion of the revenue of India consists of the rent of land. So far as this resource extends in any country, the public necessities of the country may be said to be provided for at no expense to the people at large. Where the original right of the state to the land of the country has been reserved, and its natural—but no more than its natural—rents made available to meet the public expenditure, the people may be said to be so far untaxed; because the government only takes from them as a tax what they would otherwise have paid as rent to a private landlord."

Right Hon. J. Wilson: *Financial Statement dated 18th February 1860, printed in the Proceedings of the Legislative Council of India, Volume VI, pages 111-112.* 1860

"But if we are about to call upon our fellow-subjects in India to submit to some further contribution to the State, I may be permitted to point out how very small is the sum in the shape of taxes which they at present pay. I believe it to be undoubted that India is, and will remain, the lightest taxed country in the world, in proportion to the good Government which it enjoys. Sir, the sum total of receipts for the current year is £37,706,208. But that includes Land Revenue, which no one will deny can only be regarded as rent, the proprietary right of the Government to a share of the rent having never been disputed, and which, if not paid to the Government, would undoubtedly be paid to the zemindar or other proprietor:—it also includes the receipts from Opium, which in no sense can be called a tax:—it includes other receipts of a like kind, which on the whole amount to no less than £28,678,235. The balance amounting to £9,027,973 can alone be termed taxation in the sense in which that term is used in Europe. The receipts from the Crown lands of England would certainly never be called taxes. This sum of £9,027,973 consists of Customs duties, Excise, Sayer, Abkaree, Moturpha, Trade Taxes, Salt; and Stamps. Strictly speaking, these are all the taxes now levied in India. The population of British India by the last return to Parliament was 132,292,000, giving an average of one shilling and four pence, or of little more than ten annas a head; while in England the rate per head of taxation strictly speaking is £2-3 a head. In India, even including Land Revenue, the rate would be considerably under five shillings a head."

Right Hon. Henry Fawcett: *Manual of Political Economy,* 1863, *page 592 of the edition of* 1907. 1863

"The British traders who first settled in that country found it governed by a great number of rulers, who owned the soil, and derived their revenue by making their subjects pay a rent or tax for permission to cultivate the land. The dominions of these native rulers were obtained by the English, either by annexation, or by conquest; and, consequently, our Government gradually became possessed of a great portion of the soil of India, and could exercise over it the same rights of property as those which an English landlord exercises over his own estate. The Government in India takes the place of individual landlords, and the cultivators of the soil rent their land from the Government instead of from private landowners."

1867 *Privy Council Appeal in Gunga Gobind Mundul and others* versus *The Collector of the Twenty-Four Pergunnahs and others, reported in Moore's Indian Appeal Cases, Volume XI*, 1866-67, *pages* 359-362.

"If, as the Government contend, these lands were rent-paying lands, the title of the Government was simply to the rent, the nature of which was that of a *jumma* or tribute; and if the holders of these lands asserted then, or subsequently, a groundless claim to hold them free of rent, as *La-khiraj*, that claim would not destroy their proprietary right in the lands themselves, but simply subject their owners to liability to be sued in a resumption suit, the object of which is, not to obtain a forfeiture of the lands, but to have a decree against the alleged rent-free tenure, involving the measurement and assessment of the lands, and the liability of the person in possession, if he wishes to retain possession, to pay the revenue so assessed.

* * * * *

Supposing that, on the extinction of the title of a person having a limited interest, a right to enter might arise in favour of a remainder-man or a reversioner, the present case has no resemblance to that. The interest of the person in possession is not limited but an absolute interest; the title to the lands is one inheritance, the title to the *khiraj* or rent is another. Though these lands are treated as part of the *khas mehals*, yet there is no proof in this case of any relation of landlord and tenant ever existing between *Johnson* and the Government.

* * * * *

In the Civil Court, the title of the Collector to sue was put upon the ground of the relation of landlord and tenant; and of the right of the landlord to sue in order to protect his tenant, and to assert his title as landlord. But such is not the real relation between the parties which the evidence discloses. Prince *Gholam* took, by conveyance, from *Brown*; he states his title to have been derivative from *Johnson*, who conveyed to *Green*, who conveyed to *Brown*, who conveyed to the Prince a title to the absolute ownership never interrupted.

There is no relation of landlord and tenant in such a case between the Government and the owner of the lands, who is the landlord and not a *Ryot*. The Government has a title to the rent or *jumma*. By whatever name it be called, the right and title is to the rent substantially; it does not include a right to the possession of the lands, though such a right might arise by forfeiture, or extinction of the ownership."

1870 Sir George Campbell, K.C.S.I, M.P. (*Chief Commissioner of the Central Provinces of India*): *The Tenure of land in India, published in Cobden Club Essays, Systems of Land Tenure in Various Countries, pages* 126 *and* 130 *of the Edition of* 1876:—

"The long-disputed question, whether private property in land existed in India before the British rule, is one which can never be satisfactorily settled because it is, like many disputed matters, principally a question of the meaning to be applied to words. Those who deny the existence of this property mean property in one sense; those who affirm its existence mean property in another sense. We are too apt to forget that property in land, as a transferable mercantile commodity absolutely owned and passing from hand to hand like any chattel, is not an ancient institution, but a modern development, reached only in a few very advanced countries. In the greater part of the world the right of cultivating particular portions of the earth is rather a privilege than a property; a privilege first of a whole people, then of a particular tribe or a particular village community, and, finally, of particular individuals of the community. In this last stage the land is partitioned off to these individuals as a matter of mutual convenience, but not in unconditional property; it long remains subject to certain conditions and to reversionary interests of the community, which prevent its uncontrolled alienation, and attach to it certain common rights and common burdens.

* * * * *

This is certain, that in modern times, and indeed for centuries past, the share taken has been so large as to be no mere tax, but substantially to absorb the rent. It has amounted, in fact, to a customary rent raised

to the highest point to which it can be raised without causing the people to emigrate or rebel, and so defeating its own end. It seems to me that the distinction between a tax and a rent is merely a matter of amount; and that if a land tax is so high as to absorb the rent, it becomes in fact rent. In this view the State in India may be considered to have been the superior proprietor, in the same sense as any other proprietor who is entitled to receive customary rents, but does not cultivate or manage the land."

Privy Council Appeal in The Collector of Trichinopoly versus *Lekkamani and others, reported in Macpherson's Law Reports—Indian Appeals, Vol. 1*, 1873-74, *pages* 306-309.—*Judgment delivered by The Right Hon. Sir Barnes Peacock.* 18'

"Laying out of consideration for the present the words of the preamble, which form no part of the enactment of the Regulation (see *Dwarris* on Statutes, p. 655), it is clear that the affirmative words of the 2nd sect. 'That, in consequence of the assessment the *proprietary right* of the soil shall become vested in the zemindars, &c.,' did not either give to or take away from the former owners of lands not permanently assessed any rights which they then had. It merely vested in all zemindars an hereditary right at a fixed revenue upon the conclusion of the permanent assessment with them. It is a maxim that affirmative words in a statute without any negative expressed or implied do not take away an existing right (see *Coke's* 2nd Institute, p. 200; *Dwarris* on Statutes, p. 637). There are no words declaring that no proprietary right then existed, or should thereafter be deemed to exist, except in Government, in any lands not permanently settled; and in their Lordships' opinion it was not the intention of the Legislature to pass such an enactment.

The words 'proprietors of land,' as used both in the *Bengal* Code of 1793, and in the *Madras* Code of 1802, have a technical signification (see the definition in *Bengal* Reg. VIII. of 1793, sects. 5, 6, and 7; and Reg. XXVII. of 1802, *Madras* Code, sect. 2). They refer to "zemindars, independent talookdars, and others who pay the revenue assessed upon their estates immediately to Government;" and the words 'proprietary possession,' as used in the recital of Reg. XXV. of 1802, must also be read in a similar sense as meaning the possession and rights of a proprietor in the technical sense in which that word is used, viz., the person who pays the revenue immediately to Government. (See Reg. I. of the *Madras* Code, sections 14 and 16.)

There are frequently many valuable tenures existing between the zeminder and the ryots, or actual cultivators of the land. If the Regs. XXV. and XXXI. of 1802 were to be read in the sense contended for on the part of the Collector Appellant they would have the effect of vesting in Government, not only all hereditary estates, but all subtenures, whether for life or otherwise, and whether created by the native Governments before the territories came under the Government of the *East India Company* or not.

* * * * *

The object of the Reg. XXXI. of 1802 was merely the protection of the revenue from invalid lakiraj grants, and to provide for the mode of trying the validity of the titles of persons claiming to hold their lands exempt from the payment of revenue; it was not intended to confer upon Government any title which did not then exist. The words "alienations of land" referred not to mere transfers from one proprietor to another, but to grants for holding lands exempt from the payment of revenue. It is clear that the Regulation never intended to assert that, *according* to the usages of the country, there was no private right to lands; for, in rendering valid all lakiraj grants made prior to a certain date, and declaring that the holders should continue to enjoy the same free from the payment of revenue, there was this proviso, that the lands had not *escheated* to the State since those dates."

Extracts from certain minutes recorded in 1875 and published in an Appendix to the Report of Indian Famine Commission of 1880, pages **134** *to* 146.

Sir LOUIS MALLET: *A minute, dated 3rd February.*

"Mr. James Mill, in his evidence before a Select Committee in 1831, speaks of the *rent* of land in India having always been considered the *property* of Government.

In a return to the House of Commons in 1857, on Indian Land Tenures, signed by Mr. John S. Mill, I find the following general statement:—

"Land throughout India is generally *private property,* subject to the payment of revenue, the mode and system of assessment differing materially in various parts."

On the occasion to which I have already referred, viz., the correspondence with Madras in 1856, the Court of Directors emphatically repudiated the doctrine of State proprietorship, and affirmed the principle that the assessment was revenue and not rent; the revenue being levied upon rent, as the most convenient and customary way of raising the necessary taxation, which in a self-contained country, possessed of vast undeveloped agricultural resources, is perhaps the soundest, simplest, and justest of all fiscal systems.

Sir C. Wood in 1864, reaffirmed this principle, but went beyond the Court, by fixing the rate of assessment at 50 per cent. of the net produce, fully recognizing, however, that this was merely a general rule, and that in practice the greatest possible latitude must be given.

The principle thus established appears to rest, then, upon a solid, scientific ground; but launched, as it necessarily was, in language and under circumstances which really almost reduced it to an abstract proposition (for the application of the principle was entirely left to the judgment of the Settlement Officers, and the tasks given them altogether beyond the power of any human beings to discharge, except in the roughest manner), one cannot wonder that the whole administration has drifted into the chaos in which these papers show it now to be.

One is tempted to ask if rent—economic rent, pure and simple—is alone to be taxed, why, instead of the costly, cumbrous, capricious, and when all is said, most ineffectual settlement system, we cannot leave the assessments to take care of themselves, and take whatever percentage on the rental of the land we want, wherever we find it. I can only suppose that the answer would be, that in truth the 50 per cent. of the net produce has been a mere paper instruction, a fiction which has had very little to do with the actual facts of the administration, and that in practice the rates levied have often absorbed the whole rental, and not infrequently, I suspect, encroached on profits also.

But to return to my narrative of inconsistencies on the part of the Home Government.

I have referred to the instructions of 1854 and 1864, as regards Madras. In the year 1861, proposals were made by the Government of India for the redemption of the land revenue. These were not entertained, but I mention them as showing that here again that Government at all events proceeded on the theory of *rent* and not *revenue,* and in the policy put forward, although still in abeyance, by the Home Government so late as 1865, the general principle of which appears to be that a permanent settlement, after revision, might be made on estates in which the actual cultivation amounts to 80 per cent. of the cultivable area. This is a return to the order of ideas which prevailed in Lord Cornwallis's day.

I do not wish, on this occasion, to discuss the question of principles which lies at the root of this controversy, because I am well aware that it is one which every one connected with the Government of India regards with extreme aversion, and also because it is quite unnecessary for me to state my absolute disbelief in the success of any experiment of Government on a large scale, founded on communistic principles. That even worse results than those which are apparent, have not followed the partial assumption of the function of proprietor by the State in India is, I suspect, owing to the constant compromises which have been made, and the alternating influence of the counter current of opinion and policy in favour of private rights.

* * * * *

If it is argued that it is of no practical use to arrive at, and act upon, a definite principle in this matter of land revenue, and that, so long as we obtain our money, it is idle to dispute as to the terms employed in raising it,—I answer that this indifference to accurate thought and expression has been, and is, a source of the greatest possible difficulty. I will take, as an instance, the Permanent Settlement in Bengal. Is it not notorious that the absence of any careful distinction between rent and revenue has led to the claim, still held by many of our highest authorities to be incontestable, to an immunity from all new taxation on the part of landholders? The solution of this difficulty is becoming every year a question of greater political importance, and may become a source of much political danger.

The close connection between the system of land tenure prevailing in a country, and the condition of its population, will, I imagine, be generally admitted. In India, where agriculture is the principal, and indeed the only, industry on a scale large enough to make it a national characteristic, it seems to me that the conditions on which the land is held must be an object of primary and paramount importance.

Whatever opinions may be held as to the principles of land tenure, certain facts are, I think, apparent.

On the one hand, we see a system which sweeps into the coffers of the State 50 per cent. or more of the net produce of the soil, thus diverting a fund which, in countries where private property is absolute, would, to a great extent, find its way back again into channels of agricultural improvement.

But the amount of produce thus diverted is not only large—it is also uncertain. The percentage itself is uncertain, varying with the views of successive governments, and the amount actually assessed, even within the prescribed limits, is uncertain, varying with the accidents of seasons, with the character of the cultivators, and with the judgment and knowledge of the Settlement service.

Whether the Government or the assessor leans to the side of indulgence or to that of severity, all the consequences of uncertainty are equally involved. What those consequences are likely to be it is needless to enumerate. It is enough to say that security and permanence are the essential conditions of productive energy."

Sir G. CAMPBELL: *A minute, dated 25th February.* 1875

"I do not see that much can come of further stirring the vexed question whether the money taken by Government from the land in India, is revenue or rent. It is more a question of words than of anything else. We now take as nearly as we can *half the rent* of lands not permanently settled, and whether we call that half rent, revenue or rent, the fact is the same.

The term *net produce,* as used by the Indian revenue officers, is synonymous with rent. It is only in regard to lands where the same man is both owner and occupier that the term is used, because there is no actual rent, and under the form of net profits the attempt is made to ascertain what would be the rent if the land were rented.

I apprehend that now-a-days, in most parts of India, there is some land rented either under customary rents or competition rents sufficient to give some index to the rent rates actually prevailing. I rather fear that the Madras Settlement Department are carrying on the attempt, long ago abandoned in Northern India, to ascertain the net profit or rent, by calculating the gross produce and the expenses of cultivating, and thence deducing the net profit. I am much convinced that any attempt to do anything of the kind is quite hopeless. If there is no rent to take as an example, we must arrive at rent rates by some rule of thumb process."

1876 Sir Henry Montgomery: *A minute, dated 4th March.*

"It seems to me unlikely to lead to any practical advantage to enter on the vexed question of revenue and rent. Volumes have been written on the subject during the past century, and I doubt whether the advocate of either side has been persuaded by the arguments of his opponent."

1875 Sir Erskine Perry: *A minute, dated 8th March.*

"With respect to Sir Louis Mallet's paper, I would venture to suggest that speculations as to whether the Government demand from the land amounts to rent or revenue belong to the class of what the French call *speculations oisives.*

Government in India has always assumed a right to take what it chooses, and the amount claimed as its due has for the last 3,000 years varied between such wide limits as one-fourth and one-twelfth of the gross produce. In the former case, the amount would be on certain soils rent, in the latter, it would be only revenue. In the Madras Presidency, up to very recent times (and perhaps even now), the assessment on the poor lands amounts to a rack-rent and this is shown by the cultivator ceasing to cultivate land when he finds he can obtain no profit from it beyond the expense of production.

The 50 per cent. of net profits is stated by Sir Charles Wood, in his Despatch of 1864, to be equivalent to half rent, but in practice I apprehend in Madras no nice calculation is ever made, but the care of the Collector or Settlement Officer is directed towards making the assessment on each field moderate."

1867 Sir H. Maine: *A minute, dated 13th March.*

"I concur with Sir George Campbell in considering that the question raised by Sir Louis Mallet's Memorandum is in the main a question of words, but I do not altogether agree with Sir Erskine Perry that for that reason it is a "*speculation oisive.*" Since I have had any knowledge of India, nothing has seemed to me more remarkable than the degree in which the ideas of the Indian Government, and consequently the fortunes of the Indian population, have been affected by what I regard as questions of words, questions, namely, as to the words descriptive of Western phenomena which can properly be used of Eastern facts and institutions. I suppose, with Sir Henry Montgomery, that whole volumes have been written on the point whether the revenue habitually derived by Oriental Governments from land is best described in European phraseology as rent or tax. And a scarcely smaller bulk of printed paper has been covered with dissertations on the protected hereditary tenancy of the East; one set of disputants affirming and the other denying that it can be reconciled with the Western conception of ownership; one drawing the inference that it ought to be encouraged, the other that it ought to be discouraged or abolished. Of course, I do not mean to say that questions of substance are not constantly agitated in these controversies, but they seem to me to have a tendency to go frequently astray and to lose themselves in questions of words.

If it is absolutely necessary to answer the question whether the land revenue taken from time immemorial by Eastern Governments is or is not rent, I imagine that the answer must be in the negative. It seems to me incredible that any Government, since the beginning of history, should have taken the exact economic rent of the territory occupied by its subjects. In order to obtain this, a Government must have put up the soil in parcels to competition, without recognizing any hereditary right in any one person which entitled him to be preferred to another person who bid higher for the occupation. No evidence of any such system exists; some preferential rights, whether they can or cannot be called ownership, have always been acknowledged. But unquestionably Oriental Governments have occasionally absorbed all but the whole of the fund from which rent would come under a system of the Western type, and indeed have probably gone further every now and then, and have encroached on the scanty capital of the cultivators. I do not know how far the remarkable investigations of Mr. Edward Thomas, the eminent Indian antiquarian, on the financial resources of the Moghul Empire, have attracted notice. There appears to be documentary evidence, trustworthy within no very wide limits, that, out of the total revenue which the Moghul Emperors, at the end of the 17th century, took from a territory roughly corresponding to the present British Indian Empire, extending rather farther to the north-west and not quite so far to the south, the portion answering to our land revenue, amounted to no less than 35 millions sterling. As India was certainly not more prosperous in the 17th than in the 19th century, these prodigious figures are only intelligible on the assumption that the whole, and occasionally more than the whole, of the fund under other circumstances available for rent was exhausted. Whether they are entitled to absolute credit or not, they are probably quite accurate enough to indicate the character of the system of land revenue which the English inherited from their Mahometan predecessors.

The considerations which led a certain school of Anglo-Indian functionaries, and a certain number of English theorists on India, to speak of the Indian land revenue as rent, and of the power in virtue of which it is taken as ownership, may be understood, as it seems to me, readily enough. These terms did really express to an English ear, better than any others, the nature of the right which was exercised by Indian Governments. The morality current in England did not forbid the exaction of an extreme rent from a tenant, just as the morality current in India did not forbid the exaction of excessive contributions from a subject in virtue of the land which he occupied. Again, as Mr. J. S. Mill pointed out, the direct effects of payments of land revenue, and of payments of rents, on the general mass of cultivators are precisely the same. So long as the occupier of land must make over a portion of the produce raised by his labour and capital to somebody else, it does not directly concern him whether the transfer is made under the name of rent or under the name of revenue. No doubt the indirect results of the Eastern and of the Western systems are extremely different. Under the former the whole class, which consists of receivers of rent, either does not exist or is reduced to comparative insignificance, and from this many important economical and political consequences follow. Nevertheless, we must be just even to systems which exact excessive contributions from the land. He would be a bold man who asserted that an enlightened government putting on the land taxation so heavy as virtually to extinguish the landed proprietary, but spending the produce of taxation wisely according to its lights, would have been a curse to the Ireland of 150 years since. Where you have great scarcity of capital, a spendthrift proprietary, and a religious system which actively encourages an inordinate growth of population, there is still something to be said for the fiscal rights of the State as against the privileges of ownership.

The rival theory that the Indian land revenue is a tax, is so far more correct that we in Western Europe have agreed to apply the word "tax" to every exaction of the State from persons recognized as owners; and the English Government has never pushed taxation so far as to obliterate ownership. The chief objection to the word appears to me to be that it carries with it associations with the land tax, which in all European countries is only one tax among many, and which is especially light in England. The Indian malcontents who visit this country have discovered the advantage given to them by this association, and dwell upon no topic more constantly than the enormity of the Indian land tax. It is certainly unfortunate, but the lighter our assessments of land revenue become, the more does the land revenue come to resemble a land tax, and the more plausible are the arguments against it.

It is much to be wished that questions whether the land revenue is rent or tax, and inferences from one view or the other, would give way to unbiassed inquiries whether the heavy or permanent assessments, which generally go with the theory of rent, or the light assessments, which are usually associated with the tax theory, do most to improve the moral and material condition of the great mass of the population. Even a superficial observer, whose eye has once been struck by the extraordinary difference between the miserable cultivators of Lower Bengal and the prosperous peasantry of Madras and Bombay, cannot shake off a suspicion that some theory or set of preconceived opinions prevents our ascertaining, as a matter of fact, what is the agrarian system which does most for the happiness of the people of India.

There have doubtless been a series of compromises on the subject of revenue, as Sir Louis Mallet observes, during the whole period of the British government of India. But I must enter my protest against describing them as a struggle between "communism" and the recognition of private rights. We often hear all resistance to the abolition of protected tenancy stigmatised in India as socialistic, and all vindication of the rights of the State to land revenue denounced as communistic. But the application of very modern words to very ancient things, which is always of doubtful propriety in many ways, has a tendency to effect a dangerous reversal of the burden of proof. He who in India wishes greatly to diminish the land revenue and to extinguish co-ownership and protected tenancy, is not on the Conservative but on the ultra-Radical side, and must be listened to with all the reserve demanded by the arguments of those who would put an end to institutions of enormous antiquity, bound up with the whole mechanism of government and society."

Sir BARTLE FRERE: *A minute, dated 10th April.*

"I think the discussion raised by Sir Louis Mallet is a very useful and practically important one. But a good deal of the difficulty he, and I may add others, find "in recognizing any common understanding between local authorities as to the relation of Government to the occupiers of the soil," seems to me due to the want of accurate definition of the sources of public income which we are discussing.

We talk of "land tax." "land assessment," &c., without recollecting that the land revenue of India, or of almost any district in India, generally includes specimens of almost every conceivable form of income, public or private, which can be derived from land, or from what we in England call real property.

First, there are variations in the *proportion* of the produce of the land which the State exacts, as we shall see if we note a few of the best known classes of such income from land in India:—

1. *A true land tax*, accurately fixed according to known rules at a certain proportion of the true rent or annual value of the land.
2. *A land tax fixed more or less arbitrarily*, and absorbing a *varying* proportion of such rent.

Sometimes such a tax is fixed,—

(a) In permanence. In such cases the proportion of rent absorbed must vary greatly and for ever; because, while the amount of tax is fixed, the elements which affect the true rent are perpetually varying.

Sometimes the tax is fixed,—

(b) Only for a limited term of years, in which case the variations from a real land tax will be smaller and less permanent.

Sometimes the tax is fixed,—

(c) From year to year, in which case it might, theoretically, be made to correspond to the true land tax, but in practice, for very obvious reasons, it never does so.

3. *A quit rent*, or acknowledgment of ownership, or superiority of tenure, or sovereignty, in a great variety of forms, as tributes or fees, or reduced rent, such as we in England know as quit rent, chief rent, feu, compensation for heriots, &c.
4. *A full rent*, leaving nothing to the cultivator but the wages of his labour and the interest on his capital.
5. *A rent, and something more.* Sometimes trenching on the wages of labour or the profits of capital; sometimes the tax-receiver supplies a share of the capital, and takes interest for it.

The reader of much of the literature relating to Indian land revenue would suppose that it came for the most part, or at least very frequently, under Class I. as a *true land tax*. But with the exception of a very few localities, almost infinitesimally small in proportion to the total area which pays land revenue in India, such a *true land tax* is practically unknown.

I can only at present call to mind a few scattered properties in the Presidency towns and a few villages or small clusters of villages where a *true land tax* is paid to Government.

The greater portion of Indian land revenue comes under Class II., *a land tax fixed more or less arbitrarily*, and absorbing a varying proportion of rent. Most of the Bengal land revenue would fall under Subdivision (a) of Class II.; all three classes (a), (b), (c), will be found in Madras; (b) generally in the Punjab, Bombay, the North-West Provinces, and Central India, with some instances of (c), which is also the subdivision under which the land revenues of Burmah and of most Native States would fall. A few specimens of (c) will be found everywhere, especially in the wilder and least settled tracts.

Class III., *a quit rent*, will be found frequently in Bombay and in Native States, under such terms as "*chout*," "*salamee*," "*mokassa*," &c.

Class IV., *a full rent*, is not often recognizable like the others by the terms of the engagement between Government and the persons paying land revenue; but anyone who will take the trouble of going carefully into the subject will be able to satisfy himself that the State often takes a *full rent*, even when it professes and believes itself to be taking a mere land tax or share of that rent, under Classes I. or II. Indeed, I have known many instances of lands nominally held under Class III., at what was intended to be light quit rents, abandoned because, through change of prices and other circumstances, the owner found that the Government demand absorbed more than the full rent.

It might seem almost impossible that the Government demand should ever amount to what is defined as Class V. (*rent and something more*), but in my early years, when assessments were high and prices low, I often met with whole districts in the Deccan where the cultivator could not pay the Government demand without trenching on his own wages as labourer, to the extent of his having less for himself than a hired labourer would require, and where the capital was more or less irregularly supplied by Government advances (tuccavee, &c.) for which interest was charged by the State. Instances of this kind may now be comparatively rare, but I am satisfied I could produce a few in most provinces.

Let us note, also, that though the demand of the English Government is generally a money sum charged for a specified area, either ascertained or estimated, this is not always the case; and in many wild outlying tracts of British India, in parts of Burmah, and very frequently in Native States, the Government demand is still taken by a share of the gross produce in kind, or by such devices as poll taxes, house taxes, taxes on the plough, pair of bullocks, billhook, or hatchet. In all such cases it is of course impossible to say how much of the true rent the Government demand absorbs.

Secondly, there is infinite variety in the *class of persons* connected with the land who are required to pay the Government demand. For example:—

1. Sometimes the demand is from the sovereign or quasi-sovereign. When he is a great chief or ruler the demand will probably appear under a separate heading as tribute of some kind; but many of the Indian sovereignties or quasi-sovereignties are smaller than the smallest of our European petty states, and in many of our remoter and less settled provinces, and even in some very old and well settled and civilized provinces, like Kattywar, it will be found that our Government, and still more frequently a Native State, takes a very small sum from a very small chief and credits it to "land revenue," though the political status of the payer is really that of a chief, managing his own estate despotically and independent of our laws, and himself levying taxes from the owners or occupiers of land.

2. Still oftener, it will be found that Government deals with a great landholder, who does not assert any right of personal property in the estates for which he pays the Government demand. Numerous instances of this kind will be found in parts of Bengal, Madras and elsewhere.

3. Government often deals with a head man more or less improvised by our settlements as the payer of the Government demand, on behalf of all sorts of persons liable within a fixed area. Such are head men under various names, "talukdars," "lumberdars," "malguzars," &c., &c.

Sometimes these men hold their position by ancient custom, but very frequently they are the creatures of their own recent settlements, devised to save time and trouble in ascertaining who ought to pay to Government and how much, and they are fertile causes of every kind of confusion and oppression.

4. The Government demand is sometimes paid, according to fixed custom by co-sharers in the produce of a given area. Specimens of this mode of levying the Government demand may be found under various names (baghdaree, &c.) in various parts of India, and sometimes the system is very ancient.

5. The Government demand is often paid by the real landowner, the man who is acknowledged by law or custom as the proprietor of the soil, with a right to let or sell it.

6. The Government demand is often paid by the cultivator, who claims no right of ownership in the land and cannot by custom or law complain if at the end of a season his land is taken from him and given to another to cultivate. (But I may notice that, even where this liability is most unhesitatingly admitted in terms, the enforcement of the right of ejectment would be looked on as a great hardship.)

Now, I believe that most of these variations in the persons from whom the Government demand is leviable could be found even where such want of uniformity would be least suspected, say, for instance, in the parts of Bengal under a permanent settlement. But it is clear that, as long as these variations exist, it is hopeless to expect "any kind of common understanding or agreement between the local authorities as the relation of Government to the occupiers of the soil" throughout the whole of India.

Again, thirdly, if we look to any given area, not smaller than that of a village, it will be found that *different parts of the area* contribute to the Government exchequer in very different proportions. These will almost invariably be,—

1. Rent-and-tax-free lands ("inam," "mafi," &c.), the grants of former sovereigns and landholders to court favourites, priests, &c. In some parts of the country, as in Guzerat, the quantity of such land is largely increased by lands the freedom of which from assessment has been purchased, or got by a kind of mortgage, in consideration of sums of money advanced to the principal landholders in troublous times, and the freedom from assessment has been so long recognized by usage that it has become a legal title ("vechan," "geran," &c.).
2. There are lands held rent-or-assessment-free in consideration of service ("chakri inam," "jori inam," &c.). In many parts of the country every village artisan and official has a slip of land so held more or less rent-and-tax-free.
3. There are lands paid for in money or in kind, and under various tenures, more or less indicating absolute proprietorship, with rents or assessments often varying according to the more or less absolute character of the property (oopuri, mirasi, gutkoli, &c., &c.)
4. The assessment is often more or less heavy, according to the caste of the cultivator; in some parts of the country the lower, or wilder castes pay more, in some they pay less, than ordinary cultivators, according to the degree in which they are dreaded from their numbers and lawless habits, or considered convenient subjects for heavy taxation. The priestly and soldier classes are apt everywhere to get off easily.

* * * * *

What, then, are the lessons deducible from the facts stated?

1. That the Indian land revenue is rarely, if ever, a true land tax, or capable of being converted into a true land tax, except by an inquiry much more tedious and detailed than has ever yet been undertaken, to ascertain the true rent, and the person who pays it, and also the person who enjoys it, and who would have to pay the land tax when fixed.

2. That such a process of limiting the Government demand to a true land tax would certainly greatly reduce the land revenue in most parts of India, and, if the system were uniformly carried out, would as certainly involve logically an increase in the demand on many estates under the permanent settlement.

3. That the Indian land revenue is made up of a great variety of forms of income from land, and that such varieties may be traced, not here and there, as exceptional relics of extinct systems, but everywhere throughout India, so that the land revenue resembles in no way our English land tax, but rather the income of some great landed proprietor, such as the Duchy of Cornwall, or any of the old landed aristocracy, on whose rent roll may be found all kinds of forms of income from land, houses, mines, waters, &c.

4. That the rules as to what shall be levied as land assessment in India, and from whom, depend in most cases upon custom, and very rarely on enactment by statute, the statute, where one exists, presupposing what is called "a settlement," one part of which is an inquiry into all rights and liabilities connected with land. This inquiry has been sometimes systematic and exhaustive, but it has been often very hasty and superficial, and an immense amount of wrong-doing and confusion has been, and is, the result of its imperfection.

5. That the process required to correct this imperfection is,—

(a) Careful inquiry and record of facts connected with land, its produce, &c., the customary rights and liabilities attaching to it;

(b) A raising or lowering of the Government demand, so as to make it easily payable by the person liable for its payment to Government, according to the usual custom of the country.

In doing this, custom and past usage are mainly to be consulted. It cannot possibly be done, at any rate for many years to come by statutes regulating the payment by fixed rules which give an invariable proportion of the rent to Government. The true rent must be first ascertained, and this we rarely know at present, nor is it easy of ascertainment. The process must in fact resemble not so much the assessment of a land tax in England, as the careful nursing of a neglected estate by a good land agent, and the mode of doing this will necessarily vary greatly, not only as the management of a good agent in England varies from that required in Scotland or Ireland, but as the management of a Hungarian, Polish, Wallachian, or Spanish land agent would vary from that of an agent in Great Britain, France, or Germany."

Sir Louis Mallet: *A minute, dated 12th April.*

"One effect of the present attitude of indifference assumed by the Government on this question, of itself no slight evil, is that while, unless I am much mistaken, the land revenue has not become such a vital Imperial resource that the provincial redistribution of it which would be inevitable in any scheme of federation would be an almost insuperable obstacle to such an experiment, the facilities which it affords indispose those engaged in the work of governing to look at all in the direction of the financial reforms, which are, as it seems to me, the necessary condition of a policy of centralisation and unification. For, if this policy be pursued, the day must come, and ought not to be distant, when, even with a people so helpless and so silent, there must be some recognition of the duty of redistributing the fiscal burdens of the people in the several provinces with a greater regard to equality. When that day arrives the question of revenue and rent will not be a *"speculation oisive."*

* * * * *

The function of rent is to restrain the undue pressure of population on the soil. The presence of rent is the result of the demand for land pressing on the supply. To take the rent and divide it among the whole population, which is done when it is substituted for taxes, is to counteract and neutralize the operation of the law of supply and demand, by stimulating the demand anew without increasing the supply, and tends directly to a progressive pauperization of the community.

For these reasons, without disturbing past settlements, which we cannot afford to do, and cannot now do without gratuitous fiscal sacrifices, I shall rejoice to see a limit placed on future assessments, with a view to which the renunciation of the theory of State landlordism, would be the most effectual step. In speculating on its future resources, I should like to see the Government steadily putting rent out of view, as only liable to taxation in common with other forms of property.

* * * * *

Under a system of State proprietorship, the tendency certainly is to stimulate and concentrate population, and to increase the demands on the soil of a particular district or country until there is hardly a potato, or a spoonful of rice, left to divide. Under the system of private ownership the tendency certainly is to restrict, to deter, to disperse, and in the last resort to extinguish by eviction and expatriation the surplus growth of population. I do not agree with Mr. Mill that because land is limited it is not a fit subject for appropriation by individuals, but should be considered as the common property of all. On the contrary, the fact that land is limited, affords the strongest possible reason for its appropriation by individuals, as the only method consistent with personal liberty, by which the population can be kept in due proportion to the means of subsistence.

So long as the present law of population operates, there is nothing short of State control, which can operate with so much force in restraining its undue growth in particular places or countries, as the institution of private property in the soil.

To divide the rent of a country among all its inhabitants, is an act of gratuitous distribution, with no corresponding service rendered by the recipients. The private landlord performs for society functions analogous to those of the forestaller or regrater, in adapting demand to supply, population to means of subsistence. His demand for rent is a warning to pass on to unoccupied lands, and pastures new, or to cease to increase and multiply without replenishing the earth, and it is a warning which cannot be disregarded with impunity, or by the juggler's trick of taking the rent from the agricultural class in the name of the State, and handing it back to the whole population as proprietors of the soil.

* * * * *

The principle of absolute ownership, including free exchange, which has been gradually gaining ground in the long struggle against feudalism, privilege, and monopoly, finds itself at last, as the idea of territorial sovereignty represented in the person of the sovereign recedes, confronted with the claim of the proletariat to inherit the sovereignty of the soil in the name of the nation.

Thus are two irreconcileable principles at last brought face to face. On the one hand, the principle of private property and free exchange; on the other, that of State property and monopoly.

Nothing is further from my intention than to give undue prominence to an abstract economical argument, which in all countries, and especially under present circumstances in India, has of course only a limited application, but when the converse abstract principle of State landlordism is so constantly obtruded upon us in official utterances, it is important to call to mind, firstly, that it is not a doctrine which has, so far as I am aware, any Government sanction, and secondly, that it is liable to the most serious economical objections.

I have no desire to extinguish co-ownerships or protected tenancies, or any other existing rights sanctioned by law or usage, although I would not seek by artificial means to perpetuate or extend them, and should not regret their extinction by any natural and peaceful process, and I believe this opinion to be not ultra radical, but essentially conservative in the highest sense.

But, as I have already said, I regard this question of rent or revenue on financial grounds alone, as one of immediate practical importance. I have never concealed my opinion as to the extreme gravity of our financial position, and I believe that nothing but the fact that the present system is almost secure from all independent and intelligent criticism has enabled it so long to survive."

Lord Salisbury: *A minute, dated 26th April.* 1875

"I cannot see how the question can be described as one of words. The practical difference between the word rent and revenue is very palpable to the cultivator. Under the rent theory his payments are a portion of his gross produce, limited by the condition of his first paying his wages and profits; under the tax theory they are unlimited either way, save by the power or mercy of the Government. It speaks loudly for the character of British rule, that the advocates of the ryot call for the application of the tax theory. Under the Mogul they would have welcomed the rent theory as heartily as they would the tax theory now.

Nor can I regard it as a *question oisive*. The fiscal relations of the Government to the cultivator is a question which I should rather accuse of obtrusiveness than of indolence. We may, it is true, discuss it under different forms. We may use the terms of political economy, or we may use the less accurate but more flexible language of unscientific men. Sir Bartle Frere has shown how difficult it is to classify under two sharply defined headings a series of facts differing only by small degrees. One mode of describing them may be more convenient and more complete than another. But the essential point is that the language used should be understood by those to whom it is addressed. Now it is our function to address Indian officials, and—speaking of the generation now coming into office—their vocabulary is derived with more or less fidelity from the writings of political economists. They have been required to study the science closely before they could undertake our service, and their minds were fresh from a close application to it when, for the first time, they came into contact with Indian life, and were trusted with a share of Indian Government. To the modern Indian statesman the refined distinctions of the economical school are a solid living reality, from which he can as little separate his thoughts as from his mother tongue. To us it may seem indifferent whether we call a payment revenue or rent, so we get the money; but it is not indifferent by what name we call it in his hearing. If we say that it is rent, he will hold the Government in strictness entitled to all that remains after wages and profits have been paid, and he will do what he can to hasten the advent of the day when the State shall no longer be kept by any weak compromises from the enjoyment of its undoubted rights. If we persuade him that it is revenue, he will note the vast disproportion of its incidence compared to that of other taxes, and his efforts will tend to remedy the inequality, and to lay upon other classes and interests a more equitable share of the fiscal burden.

I prefer the latter tendency to the former. So far as it is possible to change the Indian fiscal system, it is desirable that the cultivator should pay a smaller proportion of the whole national charge. It is not in itself a thrifty policy to draw the mass of revenue from the rural districts, where capital is scarce, sparing the towns, where it is often redundant and runs to waste in luxury.

* * * * *

I agree, therefore, with Sir Louis Mallet in desiring that our present nondescript land dues should tend to the form of revenue rather than that of rent."

Sir Erskine Perry: *A minute, dated 15th May.* 1875

"I wish then to remind my colleagues of the practical wisdom displayed by two old Indians of no mean note, Warren Hastings and Sir John M'Pherson, when the question which Sir Louis Mallet has resuscitated was first raised, more than a century ago. When the East India Company first began to collect the land revenue the usual difficulty as to where the proprietorship lay occurred; Sir Philip Francis, fresh from England, laid down unhesitatingly that it was vested in the zemindars. He also, quoting Adam Smith and other economists, enforced that the prosperity of the country could only be secured by imposing a fixed land tax. Warren Hastings, on the other hand, declined to give any decided opinion on a subject of which the English were so profoundly ignorant, and he recommended most strongly a careful inquiry into land tenures, either by a field survey or by examination of the village accounts. His (*pro tem.*) successor, Sir J. M'Pherson, advocated the same policy.

But Lord Cornwallis, who arrived from England in the following year, held that there was quite sufficient information before the Government, and he proceeded to enact the Permanent Settlement, which Niebuhr (perhaps with some exaggeration) pronounced to be the most disastrous, and, at the same time, the most benevolently intended measure ever devised by man.

Speaking abstractedly, and without reference to India, I agree with the views of Lord Salisbury, that it is not expedient to take the whole rent from the land as Government revenue, and that a fixed land tax is a better institution. But we have to deal with India as we find it, and with Indian views as they prevail amongst the people. Sir Louis Malet's anxiety to determine whether the land revenue is rent or tax appears to me to proceed on an erroneous application of the terms of political economy to a state of facts different from those out of which the terms arose.

Rent, according to the economists, is the difference of price between the value of the produce on the richest land and of that on the poorest which will pay the expenses of cultivation. It essentially depends on contract, and is fixed by the "higgling of the market." Rent in this form undoubtedly does not exist in India, except in a few exceptional cases, though an approximation to it may be observed in the ryotwari tenures of Madras. *Rent, again, implies the* exclusive ownership of land, by which the owner may either keep his land uncultivated or lease it to whom he pleases. This relation has never been known in India, and in fact, as in nearly all the countries of the world, the tenure of land is peculiar to itself, just as it is in England, in France, in Germany, and elsewhere. Volumes have been filled with what I venture to term "*speculations oisives*" as to the ownership of the land in India, but they have not generally been written by practical men. Colonel Sykes was one of the chief champions. What the fact really is would seem to be that the undoubted right of the Government to take a proportionate share (a proportion to be determined by the will of the Government) of the produce of the land is acknowledged all over India, and the effect of this is to make the Government co-owner with the village, the bhoomia, the zemindar, or whomsoever else, claiming hereditary rights in the land.

Under the system which has now prevailed for some years, and which has been duly kept in sight ever since I have been on the Revenue Committee (14 years), Government has recognized the policy of making a moderate assessment, which shall leave the cultivator in position of a beneficial holding, and which shall enable him out of the extra profit in good years to pay his dues to Government in bad. It also claims the right to profit by the increasing *prosperity of the country*, if agricultural produce rises in price. All this approximates the land revenue much more to the character of rent than of tax.

Many speculators (Stuart Mill at the head) have greatly approved the dedication of all the rent of the country to the support of the Government, and no doubt there is much to be said for it, though I consider its economic effects in obstructing the production of wealth are pernicious. But the obvious fact is, that it exists in India, and, as Lord Salisbury clearly sees, it cannot easily be replaced. Advocates for the exclusive *ownership of land*, with such Government tax upon it as may be deemed just, point out that all European experience shows its operation in the production of wealthy *classes* who may be available for taxation, contributors to income taxes, customs, excise, &c. But apply this experience to India, and what is the result? We find a small (a very small) wealthy class there, but their habits are so simple, their wants so few, that taxation cannot reach them, neither customs nor excise affect them, and if we apply an income tax the wealthy Brahmin of Muttra or Benares, or the Seth of Gujerat or Marwar, removes the site of his firm to a native state.

The moral of all this is, let things go on as they are doing, but do not start any *speculative theories to inflame the young civilians*, fresh from Adam Smith and Ricardo, into crusades against a system which dates back 3,000 years."

1875 Sir H. MONTGOMERY: *A minute, dated 17th May.*

"Perhaps the most prominent feature of the orders of the Home Government for the last half century has been the desire of creating, when not already existing, a proprietary right on the part of the ryot in the land he holds. I assert that the title to this proprietorship is as good and as strong as can be. So long as he pays the dues of Government he cannot be ousted, and any collector attempting *to oust him on any other grounds* than non-payment would be as certainly subject to prosecution, as he would be certain to be cast if prosecuted, in any of our courts of law.

A ryot's holding his saleable, and sales are common in every district; in many, land sells for 20 and 30 years' purchase, and is then considered by the Natives the safest and best of investments, in full confidence that the Government demand cannot be unduly raised. In Tanjore and Tinnevelly mirasi right has existed from time immemorial, and has always been protected under our rule. In these districts every inch of land is recognized as private property, in its fullest meaning.

The Rajah Ameer Sing, the predecessor of Sirfojee, by whom he was superseded, was unwise enough suddenly to raise the customary Government share of the produce of the Tanjore country, taken in kind, from 50 to 75 per cent., and thus annihilated mirasi right and all valuable ownership in the land, and for a time he ruined the country. We are not likely to, and indeed "dare" not, attempt a repetition of such policy and the mirasidars well know this, and are confident and contented and well off under our rule."

The Bombay High Court (Sir Michael Roberts Westropp, C. J. 1876
and West, J.) in Vyakunta Bapuji versus *The Government of Bombay, reported in Bombay High Court Reports, volume XII. Judgment delivered by Westropp, C.J.*

"Previously to considering the questions of proprietorship in the soil as treated from the Hindu point of view, it will be convenient shortly to state the substance of the texts of Hindu Lawgivers relating to Land Revenue.

It is declared in Manu, Chapter VII., pl. 130, 131, 132; also in Ch. X., pl. 118, 119, 120; and 1 Jagannatha's Digest, Bk. II., Ch. II., Sec. I., pl. XIV., XV., XVII., XVIII., XIX., XXIII., quoting Manu, Parasara, Vidyaranya (the Madhaviya), Vrihaspati, and Kalidasa, that the king may, in ordinary times, take a twelfth, eighth or sixth part of the crops of the land, "according," adds Cullúcá Bhatta, "to the difference of the soil, and the labour necessary to cultivate it"—and that a military king in times of war, invasion or great public adversity, may take even a fourth part of the crops. A passage in the drama of Sakuntala by Kalidàsa also shows that, at the date of its composition, the sixth part was at least popularly, recognised as the royal share. (1) And Narada's text is: "Both the sixth part of what is acquired in some other customary way, and the sixth part of the produce of the land, is the king's due, the reward obtained by him for the protection of his subjects." A previous text of the same Smriti writer is:—"The income of kings is comparable to the influx of clean and unclean floods which mingle in the ocean. As tin becomes clean when it is brought into a blazing fire, wealth, acquired by whatever means, becomes clean in the hands of a king."(2)

We now proceed to mention the Hindu texts mainly relied upon in support of the sovereign's claim to the proprietorship in the soil.(3) Amongst them is the following from the Nerasinha Purana:—"Thrice seven times exterminating the military tribe, Parasu Rama gave the earth to Kasyapa as a gratuity for the sacrifice of a horse."(4) From this highly figurative and nebulous passage, which belongs to the region of allegory or mythology and not to that of history or law, the author of the Digest, Jagannatha Tercapanchanana, has been erroneously regarded by some critics as successfully evolving *the doctrine* that the soil is vested in the sovereign. That theory has been adopted by the elder Mill in his history, and the Haileybury Professor, Mr. Jones in his Essay on Rent (5). However,

(1) Chap. VIII., v. 304, 308.
(2) Dr. Jolly's translation of Narada, p. 115, pl. 44-47.
(3) As to the sources of property according to Hindu Law, see Manu, Ch. X., pl. 115, Mitacshara, Ch. I., Sec. I., pl. 8; Mayukha Ch. IV., Sec. I., pl. 1, 2.
(4) 1. Digest translated by Colebrooke, Bk. II., Ch. II., Sec. I., pl. 12.
(5) Page 106.

in relation to the very next text (pl. XIII., taken from Yajnyavalkya) which Jagannatha cites, his commentary admits, in accordance with the text itself, that a Brahman, taking possession of unclaimed property, may retain the whole of it as against the king, and that any other person than a Brahman, occupying unclaimed property, on giving up a sixth part of it to the king, may retain the residue. If this be so as to unclaimed property, *à fortiori* would it seem to be so as to property long cultivated by the occupant. He admits that "the cultivator has a subordinate usufructuary property, not a royal property;" and refers also to Srikrishna Terkalankara's opinion that "there may be, in the same land, property of various kinds, vesting in the king, the subject, and so forth." Subsequently, Jagannatha says (1) that "others hold that the king has no property in the soil, nor power to dispose of the subject's abode, because all have a right in the soil; since the earth was created for the support of living animals as expressed in the Sri Bhagavatta: 'the earth which God created for the abode of living creatures;' and because Manu has only declared that "the subjects shall be protected by the King";(2) and Jagannatha adds:—"The subject's property in the soil is weaker than the king's, for the subject is weaker than the king; but it is founded on the reason of the law and on settled usage: therefore the land of the subject ought not to be sold by the king to another;" and, finally, he admits that "the meaning of the text, which describes the earth as the abode of living creatures, is positively this: the property is his who uses the land where he resides, and while he uses it; and thus when land belonging to any person is sold by the king, it is a sale without ownership."(3)

Mr. Mill, after making several quotations, most of which were irrelevant to this question of Hindu Law, said:—"From these facts only one conclusion can be drawn—that the property of the soil resided in the sovereign; for if it did not reside in him, it will be impossible to show to whom it belonged. The cultivators were left a bare compensation, often not so much as a bare compensation for the labour and cost of cultivation: they got the benefit of their labour: all the benefit of the land went to the king".(4) Previously (5) Mr. Mill had quoted an ordinance of Yajnyavalkya, whence he argued that it appeared "that the kings alienated their lands within their dominions, in the same manner and by the same title as they alienated any portion of their revenues." The text(6) will be found in Vol. II., Bk. II., Ch. IV., Sec. 2, pl. XXXIV. of Jagannatha's Digest, p. 162 of the ed. of 1801, and is translated by Mr. Colebrooke thus:—"Let a king having given land, or assigned a corody, cause his gift to be written for the information of good princes who will succeed him," &c. In the translation relied on by Mr. Mill, we find in lieu of "or assigned a corody," the words "or assigned revenue." For present purposes it is unnecessary to consider which of these is the better rendering of the original. In both translations occur the words "Let a king having given land;" which words Mr. Mill treats as applicable to all of the lands in the king's dominions, whereas those words would be satisfied by applying them to waste or escheated lands, or lands abandoned by the rayuts (sometimes described in Kanara as *Kulnasht or Koolnusht*), or to the royalties in the land.

Mr. Mill (7) also relied on Manu, Ch. VIII., pl. 39, "of old hoards and precious minerals in the earth, the king is entitled to half by reason of his general protection, and because he is the lord paramount of the soil," and substituted the word "supreme" for "paramount" used by Sir William Jones, being of opinion that the latter "has no meaning, but as it relates to the feudal institutions of Europe, and is calculated to convey an erroneous idea." He also refers to pl. 243 in the same chapter of Manu, which empowered the king to punish the farmer if he neglected to sow his field.(1) But Professor H.H. Wilson in his note(2) to this portion of Mr. Mill's History, shows that the latter completely misapprehended the meaning of Manu. The note is as *follows*:—

(1) Colebrooke's translation of the Digest, Bk. II, Ch. II., Sec. I., pl. XII.; ed. of 1801, p. 461; and *ibid*, pl. XXIV., pp. 471–472.

(2) *Ibid* pl. XXIII., p. 471.

(3) Not printed.

(4) Mill and Wilson's Hist. of India, Vol. I., p. 216, 5th ed. (by Wilson).

(5) *Ibid.*, p. 213.

(6) See also Mayukha, Ch. II., Sec. 1, pl. 6.

(7) Mill and Wilson's Hist., Vol. I., p. 212.

"With regard to the right of the Hindu Raja, it is by no means analogous to those of the rulers of Egypt, or of Turkey, or of Africa, supposing them to be accurately stated in the text (of Mr. Mill); and the texts which have been conceived to warrant such an inference are wrongly interpreted or understood. He is not lord of the 'soil,' he is lord of the earth, of the whole earth or kingdom, not of any parcel or allotment of it; he may punish a cultivator for neglect in order to protect his acknowledged share of the crop; and when he gives away lands and villages, he gives away his share of the revenue. No donee would ever think of following up such a donation by actual occupancy; he would be resisted if he did. The truth is that the rights of the king are a theory, an abstraction; poetically (3) and politically speaking, he is the lord, the master, the protector of the earth (Prithivi pati, Bhumiswara, Bhúmipa) just as he is the lord, the master, the protector of men (Narapati, Nareswara., Nripa). Such is the purport of the common title of a king; but he is no more the actual proprietor of the soil than he is of his subjects: they need not his permission to buy it or to sell it, or to give it away, and would be very much surprised and aggrieved if the king or his officers were to buy or sell or give away the ground which they cultivated." In a subsequent page (224) the author (Mr. Mill) is forced to admit that "all which is valuable in the soil, after the deduction of what is due to the sovereign, belongs of incontestable right to the Indian husbandman." To the same effect is the note by Professor Wilson at p. 296 of Vol. VII. of Mill and Wilson's Hist., being Vol. I., of Wilson's continuation of Mill. In weighing the value of the title. given by Manu to the king, of supreme or paramount lord of the earth we should recollect that the same sage has (Chap. VII., pl. 7) described the king as 'the regent of waters' and 'lord of the firmament.'

Moreover, Manu and his most trustworthy commentator Cullúcà Bhatta expressly assert the ownership of the cultivator. In Chap. IX, pl. 44 of Sir William Jones' translation of Manu, we read that "sages, who know former times, consider this earth (Prithivi) as the wife of King Prithu; and thus they pronounce cultivated land to be the property of him who cut away the wood *or who cleared and tilled it*; and the antelope of the first hunter, who mortally wounded it." The words "or who cleared and tilled it" in italics, are the gloss of Cullúcà Bhatta. The portion of Manu in which that passage occurs is the Chapter on Judicature and on the commercial and servile classes. Endeavouring to explain the same passage away Mr. Jones, of Haileybury, in his Essay on Rent, (4) writes:—"Manu is in fact deciding to whom the children shall belong, born of an adulterous intercourse between a married woman and her paramour. 'Learn now that excellent law universally salutary, which was declared, concerning issue, by great and good sages formerly born.' And, illustrating this in his own allegorical fashion, he compares the *earth* to the lady; and declares that he who received her virgin charms should be the owner of all the progeny she might produce under any circumstances, however strong, of detected or permitted faithlessness; and that as cultivated ground belonged to him who first tilled it, and the antelope to the first hunter who mortally wounded it, so 'men who have no marital property in women, but sow in the fields owned by others, may raise up fruit to the husband, but the procreator can have no advantage from it.' This subject Manu pursues from pl. 31, p. 291 to pl. 55, p. 295 of Haughton; and follows up his illustration by putting a variety of cases, which I certainly shall not quote, but which once read will effectually (I should think) prevent any persons again referring to this passage as a grave authority for the laws relating to landed

(1) Mill and Wilson's Hist., Vol. I., p. 213.

(2) *Ibid.*, p. 212.

(3) As to the birth of Prithu—(the Cecropes of India) and his subjugation, by agriculture, of the earth (Prithivi), see the Vishnu Purana translated by H. H. Wilson. Vol. I., Ch. XIII.

In the Apocrypha, we find an oriental potentate, Nabuchodonosor, king of the Assyrians, speaking of himself as "the great king, the lord of the whole earth"; Judith, Chap. II., vv. 4 and 5.

(4) Appendix p. 350 published in 1844.

property in India". That argument, however, was anticipated and completely refuted by the historian of Mysore, Colonel Mark Wilks, who has, in the 5th Chapter of his scholarly work, (1) discussed with remarkable ability and learning, the question as to the ownership of the soil. He strongly maintains that Hindu Law declares the proprietorship of the soil to be in the cultivators. From pp. 75, 76 of the Madras reprint we extract this passage:—

> "The most ancient and authentic authorities accessible to the English reader are the institutes of Manu, translated by Sir William Jones; and the texts from a great variety of books of sacred law, which are collected and arranged in the Digest of Hindu Law already mentioned. The author of that work (Jagannatha) informs us in his commentary, that *Chandeswara and others* explain the word *husbandman, as owner of the field*, and endeavours to remove the difficulty of reconciling these authorities with his own courtly opinion (founded on the text from the Nerasinha Purana) already mentioned, by a series of quibbles, which I will not attempt to discuss, because I profess myself unable distinctly to comprehend them.( ) This author has not thought proper to quote a text of which he could scarcely be ignorant, viz.:—'Cultivated land is the property of him who cut away the wood, or who first cleared and tilled it;' a passage which distinctly establishes the existence of private property in land in the days of Manu. It may possibly be objected that this passage occurs not in a disquisition concerning land, but for the purpose of illustrating a question of filiation, by comparing the respective claims of the owner of seed and the owner of the land in which it is sown; but this apparent objection, as I conceive, materially strengthens the authority; we illustrate facts which are obscure, by reference to facts of general notoriety; and it is manifest that this origin of landed property, so consonant to the dictates of reason, and to the general opinion of mankind, must have been familiarly known and acknowledged as a practical rule of society at the period when the code of Manu was compiled (for it professes to be a compilation), viz., about 800 years before the Christian era and 553 before the expedition of Alexander."

In the Essay on the Mimansa of Jaimini (3) Mr. Colebrooke says:—"A question of considerable interest, as involving the important one concerning property in the soil of India is discussed in the sixth lecture. At certain sacrifices, such as that which is called *viswajit*, the votary, for whose benefit the ceremony is performed, is enjoined to bestow all his property on the officiating priests. It is asked whether a paramount sovereign shall give all the land, including pasture ground, highways, and the site of lakes and ponds; an universal monarch, the whole earth; and a subordinate prince, the entire province over which he rules? To that question the answer is: the monarch has not property in the earth, nor the subordinate prince in the land. By conquest kingly power is obtained, and property in house and field which belonged to the enemy. The maxim of the law that 'the king is lord of all excepting sacerdotal wealth,' concerns his authority for correction of the wicked and protection of the good. His kingly power is for government of the realm and extirpation of wrong; and for that purpose he receives taxes from husbandmen, and levies fines from offenders. But right of property is not thereby vested in him; else he would have property in house and land appertaining to the subjects abiding

(1) Vol. I.

(2) The quibbles, which Colonel Wilks professes himself unable to understand, deserve perhaps to be called by that name; but he has, we think, mistaken their design, which was to establish and not to abolish the cultivators' ownership, by proving that it might co-exist with the higher "dominium" of the sovereign (as described in the note of Professor Wilson to which we have referred), but which Jagannatha could not conceive as subsisting without a kind of ownership in the soil.

(3) Colebrooke's Essays, Vol. II., p. 345, originally published Vol. I., trans. Royal Asiatic Society 458.

in his dominions. The earth is not the king's, but is common to all beings enjoying the fruit of their own labour. It belongs, says Jaimini, to all alike: therefore, although a gift of a piece of ground to an individual does take place, the whole land cannot be given by a monarch, nor a province by a subordinate prince; but house and field, acquired by purchase and similar means, are liable to gift."

Nilakantha (a high authority on Hindu Law in this presidency), in his Vyavahara Mayukha, Ch. IV., Sec. I., pl. 8, supports the same view thus:—"In conquest also, where the conquered possesses ownership of houses, lands, money or the like, over the same objects the conqueror obtains ownership; but, if the conquered had only the right to take taxes, that alone, not ownership, accrues to the conqueror. Thus in the 6th Book of the Mimansa 'the whole earth is not to be given away by the king of the world, nor a whole district by its ruler. The property in each village, house, or other part of the whole earth or of a district belongs solely to the holder of the soil or other property. The revenue only is to be taken by the prince.' Therefore in a gift, or other alienation (by him) of such lands as aforesaid, gift-of-land is not effected: it is only a provision of an income, but, in purchases from the landholder, ownership does accrue in the houses, land or other property purchased, and, through ownership thus acquired, and such objects thus given, the benefits (to the donor) of the gift-of-land may really be obtained." This is a revised translation, the rendering of the same passage in Borrodaile's translation being obviously incorrect.

Mr. Mountstuart Elphinstone, in his History of India, (1) when treating of the controversy as to the bearing of Hindu Law upon the question of the proprietorship of the soil, sums up against the king in these words:—"The conclusive argument is that the king's share being limited, as above, to one-sixth, or at the most one-fourth, there must have been another proprietor for the remaining five-sixths or three-fourths, who must obviously have had the greatest interest, of the two in the whole property shared." Subsequently (p. 74) he says:—"It has been mentioned that the king can alienate his share in a village. In like manner he often alienates large portions of territory, including numerous villages as well as tracts of unappropriated waste. But in all these cases it is only his own rights that he makes over: those of the village landholders and permanent tenants (where such exist), of district and village officers, and of persons holding by previous grants from himself or his predecessors, remaining unaffected by the transfers." And, in a note to the same passage, he observes that "want of advertence to this circumstance has led to mistakes regarding the property in the soil. The native expression being 'to grant a village' or 'a district,' it has been inferred that the grant implied the whole, and excluded the notion of any other proprietor."(2) We may point to an instance of such an error by Mr. Mill in his note (3) to page 213 of his History of India, Vol. I., 5th ed., and in the text of the same page.

Some observations of Lord Romilly in giving the judgment of the Privy Council in *Gunga Govind Mundul* and the *Collector of the Twenty-four Pergunnahs* (3) may be advantageously quoted here. He says:—"If, as the Government contend, these lands were rent-paying lands, the title of the Government was simply to the rent, the nature of which was that of a jama or tribute; and if the holders of these lands asserted then or subsequently a groundless claim to hold them free of rent, as Lakiraj, that claim would not destroy their proprietary right in the lands themselves, but simply subject their owners to liability to be sued in a resumption suit, the object of which is, not to obtain a forfeiture of the lands, but to have a decree against the alleged rent-free tenure, involving the measurement and assessment of the lands and the liability of the person in possession, if he wishes to retain possession, to pay the revenue so assessed." And again, (4)

(1) 4th ed., p. 21.

(2) *Et vide* Gleig's life of Munro, Vol. II., pp. 330, 331, and 4 Bom. H. C. Rep., p. 7, A. C. J.

(3) 11 Moore, Ind. Appeals 345. The title, relied upon in that case, existed A.D. 1783, and was therefore, independent of the Cornwallis permanent settlement.

(4) *Ibid.*, pp. 359,360.

"the interest of the person in possession is not a limited, but an absolute interest; the title to the lands is one inheritance, the title to the khiraj or rent is another." And again, "it is not the case of a lease at all, still less of a lease of temporary duration; it is the case of an absolute ownership of the lands; and the title of the Government rather resembles a seignory than that of a lessor with a reversion."(1) And again, "there is no relation of landlord and tenant in such a case between the Government and the owner of the lands, who is the landlord, and not a rayut. The Government has a title to the rent or jama. By whatever name it may be called, the right and title is to the rent substantially: it does not include a right to the possession of the lands, though such a right might arise by forfeiture or extinction of the ownership."(2)

The Court of Directors, in a despatch written in 1822 to the Government of Bombay, speaking of a draft Regulation prepared for the purpose of giving greater validity to the result of surveys yet to be undertaken, said:—"The preamble, as it originally stood in the draft prepared by Captain Williams, is much more correct than the preamble as altered at the suggestion of Mr. Prendergast (a member of council), which asserts the proprietary right in the land to be vested in the Ruling Power, whereas in the draft of Captain Williams it is stated that the Ruling Power is entitled to a certain share of the produce of the land." Revenue Selections, Vol. IV., p. 646, para. 59.

Sir Thomas Munro, indeed, in a letter of the 15th August 1807 (Revenue Selections, Vol. I., p. 94), proposing, to the Board of Revenue, a plan for permanently settling the Ceded Districts on the rayutvari principle, said:—"Nothing can be plainer than that private landed property has never existed in India, excepting on the Malabar Coast." The context, however, of that letter shows that by "private landed property" he meant land assessed so low as to command a ready sale. Referring to Aurangzib's opinion that "one-half of the gross produce was in general enough for the rayut, and that he ought in no case to have more than two-thirds," Munro says:—"The mode of assessment, in the Ceded Districts and in the Dekkan, still limits the share of the rayut to those proportions, but makes it commonly much nearer to one-half than two-thirds of the produce. If, by fixing the Government rent at one-third, he were allowed to enjoy the remainder, and all such future increase as might arise from his industry, he would never relinquish his farm, and all cultivated land would soon become private property. If more than one-third is demanded as rent, there can be no private property; for it is found, when land, which has formerly been inâm, is assessed, that as long as the rate is not more than one-third of the produce, the land is regarded as a private estate, and can generally be sold; but that whenever the rate exceeds one-third, the land is scarcely ever saleable, is no longer reckoned private property, and is often abandoned." A minute, from which we shall largely quote, written by Munro in 1824 when he was Governor of Madras, and when his knowledge of India had become much wider than it was in 1807, admitted the existence of private property in land in many regions besides that of the Malabar Coast, within which coast he doubtless intended to include Kanara when he wrote in 1807.

Mr. J. W. Ellis, a very weighty authority on such a subject, (3) accounting for the absence of texts, in the Hindu Law-books, *expressly* conferring upon the rayuts property in land, "though the existence of such property under a variety of terms, and for a variety of purposes is alluded to in every page," adds:—"The fact is that the thing existed in India when the Lawgivers wrote, and it was evidently superfluous for them to prescribe what they found fully established." (4) *Immo magnæ auctoritatis hoc Jus habetur, quod in tantum probatum est, ut non fuerit necesse scripto id comprehendere.*(5)

(1) 11 Moore, Ind. Appeals, pp. 361, 362.

(2) *Ibid.*, p. 362.

(3) He rendered considerable assistance to Sir Thomas Strange in composing his treatise on Hindu Law, as has been acknowledged by that learned author—1 Stra. H.L. Preface, p. XXIII of Ed. of 1830.

(4) Mirasi Papers published in 1862 by permission of the Madras Government, p. 197, note 39, *et vide* ibid p. 82, paras. 99 and 100, to the same effect by Mr. Lushington, Collector of Tinnevelly, in his Report of 29th December 1800.

(5) 1 Dig. 3, 36 (Paulus).

In his judgment in *Thakooranee Dossee* v. *Bisheshur Mookerjee*, (1) Morgan, J., regards property in land under the native rulers as "a kind of joint ownership between the Government and the cultivator." He says:—"The right of the cultivator to hold his land as long as he paid assessment to Government never was questioned."

Theoretically, it may be that proprietorship may, as Savigny (2) argues, be regarded as derived from the State, by whose sanction and under whose protection it springs into existence and is perfected, in which sense it was said of the *contribution foncière*, when imposed by the Constituent Assembly upon landed property in France: *"On pourrait donc dire avec justesse que cèst la propriété qui est seule chargée de la contribution, et que le propriétaire n'est qu' un agent qui l'acquitte pour elee avec un portion des fruits qu' elle lui donne"*.(3) This right of participation of the State in the produce of the land, which always may and in urgent circumstances must be asserted, prevents, as Jagannatha substantially contended, an unburdened ownership, but no more excludes private proprietorship than the Land Tax in England, which, in the time of William III., is said to have amounted to 40 per cent of the Public Revenue. (4)

* * * * *

The whole tenor of the report of Mr. Ellis, in 1816, on Mirasi tenure and the ancient documents, translations of which he furnished in the appendix to it, favour the opinion that, notwithstanding its modern name of Miras, the tenure was of Hindu origin, and was no other than that private property in the soil which, if not directly expressed, was, he thought, unmistakeably implied in the writings of the ancient Hindu lawgivers.(5) There is, as we shall presently see, reason to believe that the same remark may be made with regard to Mirasi tenure in the Presidency of Bombay.

* * * * *

The Board of Revenue at Madras, in their elaborate minute of the 5th January 1818, speaking of the rayut landholders, said:—

"18. The universally distinguishing character as well as the chief privilege of this class of people, is their exclusive right to the hereditary possession and usufruct of the soil, so long as they render a certain portion of the produce of the land, in kind or money, as public revenue; for whether rendered in service, in money, or in kind, and whether paid to Rajahs, Jagirdars, Zemindars, Polygars, Mootehdars, Shotriumdars, Maniamdars, or Government officers, such as Tahsildars, &c., the payments which have always been made by the rayut are universally termed and considered the dues of the Government.

"19. The hereditary right of the rayut, as above described, though everywhere of the same, or at least of a similar nature, is in value very different in different districts. After discharging the wages of his hired labourers, and defraying the subsistence of his slaves, or other immediate expenses of cultivation, if the public assessment payable by him is so moderate as to leave him a considerable annual surplus, his interest in the soil is that of the *landlord*, and his land yields a clear land rent, and is of course a saleable and transferable property; but where the revenue payable by him is so high as to absorb the whole of the landlord's rent, and to leave him a bare and precarious subsistence only, his interest in the land dwindles into mere occupancy, and from a *landlord* he is reduced to a *landholder*, still indeed clinging to the soil and subsisting by tilling it, but no longer possessing any saleable property in it.

"20. The value of the rayuts' right, therefore, varies with the weight of the public assessment of the land, which is generally found to be heavy in proportion to the length of time that the country may have been subjected to the Mahommedan Government. On the western coast of the

(1) Beng. L. R. F. B. 295.

(2) Traité de Droit Romain plac. LVII. Traduction Francaise, par M. Guenoux, Tome I., p. 375, 1st Ed.

(3) De Parieu Traité des Impôts, Vol. I., p. 229, 2nd Ed.

(4) *Ibid.* p. 178 and Journal of the Statistical Society, Vol. I., p. 247.

(5) See also Mr. Lushington's Report as Collector of Tinnevelly, on 29th December 1800; Mirasi Papers, p. 82, para 99, to the same effect.

* * * * *

Peninsula, where the Mussulman's power was both of the most recent introduction and of the shortest duration, this right constitutes a property of great value, which is vested in each individual rayut. In the Tamil country it is vested more frequently in all the rayuts of a village collectively than in each individually, and is of less value than in Kanara and Malabar, and sometimes of little or no value as a saleable property. In the Ceded Districts and Northern Circars, which were the longest under Mahommedan rule, though the Coonbees, Reddies, Naidoos, and other kadim (ancient) inhabitants assert their hereditary right to a priority and preference of occupancy, they do not now appear to possess any saleable property in the soil."

This review of the authorities leads us to the conclusion arrived at also (after careful discussion of the question) by Professor H. H. Wilson,(1) that "the proprietary right of the sovereign derives no warrant from the ancient laws or institutions of the Hindus, and is not recognized by modern Hindu lawyers as exclusive, or incompatible with individual ownership."

1877 Sir JOHN STRACHEY: *Financial Statement dated 27th December 1877, printed in the Abstract of the Proceedings of the Council of the Governor General of India, 1877, Volume XVI, page 559.*

"There is no greater, though no commoner, mistake than to suppose that, because the land in India yields two-fifths of the entire Revenues of the State, the part of the community that derives its support from agriculture contributes an unfairly large proportion of the public burdens. The ordinary misconceptions on this point arise from forgetfulness of the fact that the greater part of our land revenue is not taxation, but rent paid to the State as proprietor of the land, rent which, in European countries, would be absorbed by landlords with exclusive private rights of property, but which, in India, by immemorial custom, is enjoyed by the State as the sole proprietor, or as a joint proprietor with others. There are great differences of opinion among high economic authorities as to whether this state of things is good or bad; but such differences rather refer to its secondary results than to any question of the ultimate rights of property involved, which, like all other such rights, are essentially based on established custom. In my own belief, however, India is fortunate in deriving so large a portion of her Public Revenues from such a source. It spares her the necessity of heavy taxation, and, provided of course that we do not rack-rent the land, and provided that we give to private proprietors and tenants security of tenure and an ample and assured margin of profit, India will, I think, never regret the conditions under which her landed property is held."

1878 Mr. A. C. BURNELL: *South Indian Palaeography, page 119.*

"In the Tanjore district at least, it would be quite possible to trace in a satisfactory way the economical history of several communities. A little research in this way would remove many common errors. That the land-tax (for such it, originally, was in S. India—not rent) should amount to half the produce, has long been quoted as an instance of rapacity of the Muhammadan and English Governments, from the illustrious B. Niebuhr's early letters down to modern public discussions by people ignorant of Indian history; but it has nothing to do with either. The inscriptions at Tanjore show that the indigenous Cola kings in the 11th century took about half the produce, and F. W. Ellis long ago asserted (on other grounds) that the tax was always more than the sixth or fourth permitted by Sanskrit lawyers. A little consideration of royal grants and old private documents would also conclusively show (as the Sanskrit lawyers asserted) that the government never had any right to the land."

1880 *Report of the Indian Famine Commission, 1880, pages 90 and 110.*

"The land revenue is a source of income which in India must be distinguished from taxation properly so called, as, by immemorial and unquestioned prescription, the Government is entitled to receive from the occupier of the land whatever portion it requires of the surplus profit left after defraying the expenses of cultivation. This right was and is very often exercised by the Native Governments to the extent of taking from the occupier the whole of this surplus. But the Government under British

(1) Mill and Wilson's Hist., Vol. VII., P. 298, 5th Ed.

rule instead of sweeping off the whole margin of profit, in no case takes more than a fixed share, which is estimated at from 3 per cent. to 7 per cent of the gross outturn, or 50 per cent. either of the net produce or of the rent. In the case of the permanently settled districts, the amount to be paid by the landholders was fixed by Government in perpetuity; and through the increase in the area under cultivation, and in the letting value of land, that amount, which was then from 90 to 100 per cent. of the estimated rent-roll, has fallen to about one-third or one-fourth of the rental actually received. The land revenue may threfore with more propriety be regarded as a rent paid by a tenant, often a highly-favoured tenant, to the paramount owner, than as a tax paid by the owner to the State."

"The expression "ownership of land," when used with reference to India, must be understood in a sense differing in some important respects from that in which it is commonly applied in England. In India the immemorial and unquestioned custom of the country is that the landholders do not own the land, in the sense in which ownership is understood in England, but merely certain limited rights in it. Originally the occupant of the land possessed the right to hold and till it subject to the payment of a part of the produce to Government; and the Government possessed the correlative right to a share of the produce of the land, known as the land revenue. This simple system still mainly prevails in Southern India, i.e., in the Bombay and Madras Presidencies, and in Berar, Hyderabad, and the Native States of the Southern Peninsula, and under it the tenure of an occupant of the land is known as ryotwar. In Upper India the historical fact of the territorial superimposition of a conquering over a conquered race, and other causes, have made these rights more complex by the introduction of a class of superior holders between Government and the actual occupant; and this distinction has been made more definite by the action of the British Government. The right of the occupant has thus been divided into two parts, and he is represented by two classes: first, the cultivators, who till the land and pay rent in the form either of money or of a share of the produce; second, the landlords (or, as they are commonly called in Northern India, proprietors), who receive the rent in cash or kind, and pay a portion of it as land revenue to the Government; these classes again constantly run into each other, the proprietor in numerous cases tilling his own land or a part of it, or sometimes, while he retains the superior right in one plot of land, holding the cultivator's right in another plot. This form of tenure, which is called zemindari, prevails over the whole of Upper India, i.e., the Punjab, North-Western Provinces and Oudh, Bengal, and the Central Provinces."

Report of the Indian Famine Commission: Note of dissent by Mr. 1880
Sullivan, page 183.

"1. In a speech delivered before the Legislative Council of India in February 1860, the late Mr. Wilson, when, in his capacity of Finance Minister, he introduced a bill for the levy of a license duty and a tax on incomes, made the statement that the opium revenue of India could "in no sense be called a tax," and that the land revenue could "only be regarded as rent."

* * * * *

4. Still more earnestly do I protest against the process of reasoning by which it is sought to uphold the theory put forward by Mr. Wilson that the land revenue of India is of the nature of rent, and is not raised by taxation. Rent is a payment made by the occupier of a property to the owner for the use of the same, and to establish the above position it must be shown that the ownership of the soil in India vests in the State. Mr. Wilson did not venture on such a statement, possibly because a few weeks before he made his speech a bill had been introduced into the Legislative Council to amend an existing Act for the acquisition by Government of land for public purposes; but it is directly asserted in the Report. It is there stated that "the land revenue is therefore with more propriety regarded as a rent paid by a tenant, often a highly favoured tenant, to the paramount owner than as a tax paid by the owner to the State." This idea of the Government of India being a vast landed proprietor, and the occupiers of the soil its tenants, was repeatedly brought forward in the course of our discussions, and, although opposed by me to the best of my ability, has found expression here and elsewhere in the Report. I, therefore, now place on record my reasons

for dissenting from a doctrine for which I believe there is no historical foundation, which the action of Government itself goes to disprove, and which if accepted might lead to most mischievous results.

5. In support of the theory of the proprietary right of the State in the soil it is stated in paragraph 2, page 90, that by "immemorial and unquestioned prescription the Government is entitled to receive from the occupier of the land *whatever portion it requires* of the surplus profit left after defraying the expenses of cultivation." If for the sentence which I have italicised the words "a certain fixed portion" be substituted, the claim of the State would be correctly represented. That foreign conquerors did by force take such portion as they required may be conceded, but it is inaccurate to say that they were entitled to do so. The claim of the State is distinctly limited by Menu, the oldest authority on the subject. He says, "The revenue consists of a share of grain, and of all other agricultural produce. . . . On grain, one-twelfth, one-eighth, one-sixth, according to the soil and the labour necessary to cultivate it. This also may be raised in cases of emergency, even as far as one-fourth." Now here there is not a word which can be twisted to show that the State has any right of ownership in the soil; all that it is entitled to is a certain fixed share of the produce; and on this ancient right, and on this only, our system of land revenue settlement is based, as were those which we found in existence when the country came under our rule. Coming down from Menu to our own times, let us see if the British Government has ever asserted a general right of ownership in the land. When railways were first commenced in India one of the concessions made by the State was the provision, free of charge to the companies, of the requisite land. If, as represented in the Report, the Government was "the paramount owner," and the agricultural community merely its tenants, all that it had to do was to exercise its rights of ownership, give its tenants notice to quit, and hand over the land to the railway companies. But so unconscious was it of having such rights, that legislation was had recourse to, and in 1850, 1857, 1860, and 1870 Acts were passed to enable the Government to acquire land for public purposes, and an elaborate code of procedure was framed to regulate the mode of acquisition and the price to be paid by Government to the owners. And if further evidence be thought necessary to support my view as to the relative positions of the Government and the people of India in regard to the land, I turn to that chapter of our Report which treats of tenures, and ask attention to paragraph 3, page 111, where the position of the ryot in the Madras Presidency is described. His proprietary right in the soil is there fully recognised, and it is explained that he is absolutely free to let, mortgage, sell, devise or otherwise alienate his holding; and to this may be added that he also has full liberty to fell timber and to open mines and quarries thereon, nor is there any restriction as to his mode of farming or the description of crops he may raise. I defy anyone to show that the rights of the Indian landholder, under whatever name he may be known in various parts of the country, are here overstated, and I submit that the exercise of all or any of them is inconsistent with the position of a tenant of the State, which is that assigned to him in the Report. If the foregoing be correct, what vestige of ownership in the soil remains to the Government? That it is practically *nil* is shown by the fact above referred to, that legislation was necessary to enable the State to acquire by purchase the rights of the people in the land. If then the State be not the owner, the people cannot be its tenants, nor can the share of the produce of the land which they contribute towards the public necessity be designated rent. It is, therefore, a tax, and as such must be taken into account in calculating the incidence of taxation."

1892 Professor BASTABLE: *Public Finance, page 173 of the edition of 1922.*

"Under all the varying forms of assessment the principle that the State is ultimate owner has not been, in practice, completely lost sight of, except in the settlement of Bengal. Nothing appears more equitable than that this head proprietor should receive a share of the increasing value of the soil. On the other hand, the machinery of assessment and collection is compulsory; it is nearer akin to the process of the tax-collector than of the landlord, and the difficulty recurs of saying whether the receipts are taxes or rent. The best solution of this question is arrived at when we see

that in strictness they belong to neither class. They differ most markedly from the rent, either customary or competitive, of a modern landowner, and more nearly resemble the dues of the feudal lord. They are just as distinct from the ordinary tax, and are not governed by the canons to which it ought to conform; at the utmost they might be assimilated with the taxes on special advantages or monopolies, of which class the possession of land is one example. Where the State dues are frequently revised in accordance with the movement of land values the approximation to rent is very close; where they are changed in order to suit the needs of the State, they are practically taxation; but where, as is most common, they are fixed for long periods, or in perpetuity, they are really charges that may be capitalised at the market rate of interest. The Indian Land Tax, with its great net return of nearly £20,000,000, has, at different times and in different provinces, shown each of the three features, but on the whole the rent-charge element has preponderated over the others. The lengthening of the period of settlement, and the disposition to keep the assessment under the value, have both tended to this end."

Colonel BADEN POWELL: *Land Revenue in British India, page 49 of the edition of 1913.* 1891

"Nature of the Land Revenue, whether a 'tax' or what.—

It is also fruitless to discuss exactly what the oriental institution of a Land Revenue is, whether a 'land tax' a 'rent' or what. Certainly it bears very little resemblance to the land tax in England. At one time the tendency was to regard the ruler as the ultimate landlord or owner of the soil; the revenue was then called a 'rent'. We shall have something to say about this hereafter; at present it will only be necessary to note that the British Government has everywhere conferred or recognized a private right in land, and in large areas of country (Bengal, Oudh and the whole of Northern India for example) it has expressly declared the proprietary right of the landlords and the village owners; it is then impossible any longer to say broadly that the State takes a rent from the landholders regarded as its tenants. There are no doubt cases where Government is the immediate owner of particular lands, as it is of all waste and unoccupied land in general; but we are speaking of cultivated land in villages and estates. The Government is certainly not owner of this: the utmost it does is to regard the land as hypothecated to itself as security (in the last resort) for the Land Revenue assessed on it. The Government also fulfils some of the functions of a landlord, inasmuch as it watches over the welfare of the agricultural population, it advances funds to landholders to help them in making improvements—well-sinking, embanking, draining and the like. It is these vestiges of the landlord character claimed by the former rulers, and perhaps the sort of residuary right which the Government still has in provinces where the landholders are called 'occupants' and not 'owners' (*eo nomine*), that keep alive the question whether the Land Revenue is in any sense a 'rent'. Practically, the discussion is a profitless war of words, and we may be content to speak of the 'Land Revenue' as a thing *per se*. It *operates* as a tax on agricultural incomes—a contribution to the State out of the profits of land-cultivation, just as the 'income tax' is a contribution out of the proceeds of other industries and occupations."

The Madras High Court (Benson and Sundara Iyer, JJ.) in The Secretary of State for India in Council represented by the Collector of Kistna versus *Penumecha Venkatapathiraju Garu and another, reported in The Madras Weekly Notes, 1912, page 1242.* 1912

"The Lower Courts are quite wrong in supposing that the liability to pay land revenue rests on contract or some relation resembling contract. Land revenue is a tax imposed on lands by virtue of the prerogative of the State. The plaintiffs were bound to pay it whether water was available or not for wet cultivation. If they regarded the tax as excessive, their proper and only remedy was to appeal to Government for the reduction of the tax."

1920 LIONEL CURTIS: *Dyarchy*, 1920, *pages* 243 *and* 264.

"The extension of British dominion has everywhere meant an assumption of the right to collect the revenues and finally of the Mughal claim to the general ownership of the land."

"The proportion of net assets, to be taken by government as revenue, is not determined by statute, nor even discussed in the legislature. The successive reductions from 90 to less than 50 per cent. have been ordered by the Government of India in its executive capacity. Under British institutions a tax is an impost levied in accordance with a statute, in terms of which the amount leviable can be settled to the uttermost farthing in the law courts. If government desire to exact 100 per cent. of the net assets no law court could intervene.

The assessment made by the settlement officer is presented to the person liable for the revenue, whether zamindar or raiyat, in the form of a bargain. He may take it or leave it, and if he elects to reject the assessment proposed, his rights are passed to another, and the previous holder is compensated out of the proceeds. His tenure is thus distinctly of the nature of a tenant right."

APPENDIX V

Extracts from a letter of the Committee and the Replies of the Local Governments on the question of the incidence of the Land Revenue.

(Vide pages 74—88, paragraphs 93—109 of Volume I.)

A.—COMMITTEE'S LETTER.

The following five methods of comparing the incidence of land revenue in the different provinces were suggested in question 104 of the questionnaire of the Indian Taxation Enquiry Committee:—

(1) to divide land revenue by total population of the province,

(2) to divide land revenue by occupied area,

(3) to compare the assessment, where available, on soil units,

(4) to compare the percentage borne by assessment to rents or annual value, and

(5) to compare the percentage borne by land revenue to gross or net produce.

It is hardly necessary to examine at any length the first two of these, namely, the ascertainment of the land revenue per head of the population or per acre of land. Obviously such comparisons must be vitiated by the differing proportions of urban and rural population and the different degrees of fertility of the soil, especially when the results of irrigation are considered. The third method, the comparison of assessments on soil units is applicable as between districts in the Central Provinces, but there do not appear to be any materials for its employment elsewhere. The fifth system, the comparison of the percentage borne by land revenue to produce, in so far as it relates to gross produce, is one that has been adopted in the reports of the Famine Commissions and elsewhere. . . . But again it must be clear that variations in systems of land revenue, expenses of cultivation, fertility of the soil and nature of crops must make it a very unreliable basis for comparison between provinces.

There remains a comparison of the percentage borne by the land revenue assessment to the rental value, which, if it can be ascertained, would appear likely to afford a more accurate basis for ascertaining the incidence of land revenue than any other method. It is necessary, however, before attempting to make an estimate on this basis, to have a clear idea of what is intended by rental value. In areas in which the tenancy laws entitle tenants to hold lands at rents fixed by settlement officers or by custom, it is obvious that the rent paid by such tenants is something very much less than the real rental value, or the economic rent of the land. It seems necessary therefore, for the purpose of the comparison in question, to ignore these rents and to confine attention to competitive rents as arrived at where customary rents are not in force. It remains to consider the sources of information available as to such rents. The Committee understand that in some provinces a record is kept of all leases, which will in itself serve as a guide to the figures required. Elsewhere sales and leases are registered in registration offices, from which particulars can be secured. Another source of information would appear to be available in the records of the Courts of Wards, which have actual experience of the securing of economic rents and paying land revenue. Another source of information which has been suggested to the Committee lies in the advertisements, which are of comparatively frequent appearance in some provinces, of lands for sale or for lease. No doubt other sources of information will be available in particular areas. Lastly the reports of settlements contain the result of the exploration of all these sources of information at the time the settlements were effected. The Committee believe that, through the exploration of these various sources of information, it should be possible to secure a large number of samples of actual competitive rents paid in different districts. It would then be a simple matter in temporarily-settled districts to work out the percentage borne to these rents by the land revenue of the pieces of land so leased, and then to secure, by a process of averaging, a general idea of the burden of the land revenue upon the land. In permanently-settled districts it will presumably be impossible to isolate the land revenue for pieces of land held at competitive rents, and in that case it will be sufficient to compare the average rate of competitive rent per acre with the average rate of land revenue per acre in the district. The Committee believe that the result of such a general comparison would be welcome both to Local Governments and others in view of the obscurity which at present envelopes the whole question of the real incidence of the land revenue upon the land. And they hope that in these circumstances the Government of . . . . will be willing to have an enquiry made even at the cost of appointing a small temporary special staff for the purpose. They would suggest that the enquiry be limited to a period of ten years ending 1st January 1925.

B.—Local Governments' Replies.

I. Bombay.

Of the five methods proposed for arriving at an estimate of the comparative incidence of land revenue in different provinces, two, viz., the ascertainment of the land revenue per head of population or per acre of land, may at once be ruled out on the grounds stated by you. Though its general character seems obvious, the exact meaning of the third proposed method, viz., the comparison of assessment on soil units, is not known to the Governor in Council, but since the soil of every field throughout this Presidency has been carefully classified and its relative agricultural capacity expressed by a number (soils being referred to as of so many annas classification-value), it appears highly probable that this method is a possible one so far as Bombay is concerned. There would appear to be grave difficulties in the way of arriving at a satisfactory comparison by this method, but it is needless to discuss the matter since in fact there do not appear to be any materials for its employment outside Bombay and the Central Provinces. I am to remark merely that, while the numbers expressing relative agricultural capacity are invariably strictly comparable (for the same kind of cultivation) within the same taluka, and often throughout several districts, they are not comparable for regions with inherently different types of soil, such as the Konkan and Deccan, and moreover the classification scales employed are sometimes not precisely the same even in adjoining talukas.

The employment for the purposes of comparison of the incidence of land revenue on gross produce is ruled out by (amongst other things) the variations in expenses of cultivation. But the incidence of assessment on *net* produce would probably be the best basis of all for comparison (by net produce is meant the balance of produce which remains after expenses of cultivation have been defrayed; out of which balance the tenant receives his year's maintenance and the landlord his year's rent, the assessment being paid out of the rent). It is impossible, however, to use this method because the expenses of cultivation are not known with sufficient accuracy and it would take years to ascertain them.

In these circumstances the Governor in Council agrees that a comparison of the incidence of the land revenue on rental value may be resorted to, since a sufficient number of competitive rents can be collected from the record of rights.

This method, besides being practicable, has the great advantage of stressing the fact that land revenue is taken out of rent, that is to say, out of the surplus which remains after the tenant has taken out of the produce all costs of cultivation and also his own and family's maintenance—assuming of course that the tenant cultivates an area sufficient to provide him with full work throughout the cultivating season.

It appears advisable that the Committee should carefully elucidate the precise meaning of the proposed comparison to prevent the misconceptions that will otherwise inevitably arise. If, for instance, in province *A* the assessment is one-third of the rent for good soils, and one-sixth for poor soils, and if the corresponding figures for province *B* are one-third and one-fifth, then *A* is more lightly assessed than *B*. But if *A* has a sufficiently greater proportion of the good soil than *B*, the averaged-out percentage incidence of assessment on rent would be higher for *A* than for *B*.

Also one province may be more fertile than another, so that the rent in one is double what it is in the other, while the amount which goes to the tenant for his livelihood is the same in each. Though the incidence of assessment on rent may be the same in each, the owner-cultivator in one, after defraying his costs of living on the scale of a tenant, is left with double the surplus he gets in the other. The burden of assessment on the land may thus be much less in one province than in another, though the incidence of assessment on rent is the same in each, or even though the incidence is already higher in the first than in the second. If the proportion which rent is of assessment is different for different grades of soils in the same province, there is as much reason why that proportion should be different for different provinces.

Again, the pitch of rents may be different in different provinces. In one province out of 'net produce' of Rs. 16 derived from an acre, Rs. 8 may go to the tenant, and Rs. 8 to the landlord, while in another Rs. 10 may go to the tenant and Rs. 6 to the landlord. (The figures used are purely imaginary.) If the assessment is Rs. 2 in each case, its incidence on rent is one-fourth in the first case, and one-third in the second, though owner-cultivators are in precisely the same position in the two provinces, paying land revenue of Rs. 2 out of the net produce of Rs. 16 and retaining Rs. 14.

From such considerations as these it appears that, to get a fairly accurate conception of the burden of the land revenue on the land, it would be advisable to average out the rent per acre and the assessment per acre for each province and to exhibit these averages as well as the incidence of assessment on rent. And even when this is done, the information will still be defective and two of the three criticisms advanced in the preceding paragraphs would still apply. It appears that for a full comparison between provinces it would theoretically be necessary to exhibit how the 'net produce' is in each province divided between tenant, landlord and State; and this would have to be done for various standards of 'net produce' per acre for every province. But as stated already, practical difficulties stand in the way. The Committee may consider, however, whether it would not be advisable to exhibit rent, assessment, and incidence, in each province, for various standards of rent per acre.

As regards the practical matter of collecting rent statistics, this Presidency is in a very advantageous position inasmuch as the terms of every lease in a village are recorded in the record of rights. You rightly lay stress on the necessity of confining attention strictly to competitive rents, but perhaps the careful and laborious inquiry which is necessary to ensure that only such rents are included in the statistics is not fully realised. This is a matter that has received particular attention in this Presidency, and I append extracts from the revision settlement report of Man taluka in Satara district which will show precisely how the selection of rents is made. It is necessary that it be done equally carefully in all provinces.

In some areas cash rents are not plentiful, the practice being to pay stipulated amounts of grain in kind. In other areas the rent takes the form of a specified share of the produce. These rents in kind produce obvious, but not insurmountable, difficulties. The Committee will no doubt provide for their being evaluated on uniform lines in the various provinces. In this Presidency they will not cause much difficulty because in the main a sufficient number of cash rents will be available.

* * * * *

The process of averaging to which you refer will have to be carried out with considerable elaboration. The fraction which assessment is of rent varies from nearly one-half to one-sixth or less in different parts of this Presidency. Within the limits of one district even there are generally wide variations, for the climate changes so rapidly from west to east that many districts contain two belts of entirely different kinds of cultivation. And within the limits of a taluka the incidence is not the same for rice as for dry-crop land.

The preceding paragraphs, so far as they relate to the practicability of collecting an adequate quantity of reliable statistics, apply to the Presidency proper only, and not to Sind, where conditions are different.

Extract from paragraphs 75 and 85 to 90 from the letter from the Settlement Officer, Satara, dated 2nd March 1923—submitting the second Revision Settlement Report of the Man taluka of the Satara district.

Value of land as ascertained by sales and leases—(1) *Sales* (General).—Statistics of sales have been collected from the record of rights and in almost every case scrutinised in the villages themselves. The object aimed at was to secure pure cash sales of Government agricultural land in an ordinary fit state for cultivation (that is neither specially improved nor deteriorated) between parties who had no common interest which would affect their relations as buyer and seller. All sales which were even suspected of not fulfilling these conditions have been rejected. The chief improvements which would cause a sale to be rejected are of course wells and *tals*, the latter, however, only if they are more ambitious structures than the small embankments which are required to make land fit for rice, or to level black soil and prevent it from being washed away. Sales in settlement of account have been excluded: so that those in which there was a suspicion that the transaction was of the nature of a mortgage or a redemption, for instance, sales in which the purchaser was the last vendor, have been excluded on the ground that a conditional promise to restore the land might have been understood, even if not expressed.

(2) *Leases* (General).—These statistics have been compiled and scrutinised with the same care as those of sales; and roughly the same classes of cases have been excluded. There is, however, one class of lease which, I think, may not have been excluded in some recent settlement reports, and the non-exclusion of which may account for the very high figures of rental quoted in them. If a man sells his land, he will frequently cultivate it on lease, paying much more than the normal rent in the hope that by so doing he will retain a lien on it and some day be able to buy it back, even though there is no condition, verbal or written, to that effect. Such a case I place in the category of conditional sales in which the vendor continues in possession of the land sold and the rent paid by him is really interest; and I have accordingly rejected all leases in which the tenant is the previous owner and vendor. Particular care is needed in scrutinising leases because, owing to the facilities given by the Land Revenue Code for the recovery of rents, the sawkar at times finds it convenient, if a debtor has no land to mortgage, to let his own land to him for a sum covering the interest of his debt, so that he can recover it under the Land Revenue Code, and be saved the trouble of going to the Civil Court. I have discovered actual instances of this.

Leases for a share of the crop are very common; and those for a fixed amount of grain are also fairly common. Leases for a cash rent, however, are sufficiently numerous for share leases to be disregarded altogether. Cash rents should in strict theory follow closely the rise and fall of prices, and their course should, therefore, correspond with the value of rents in kind. As a matter of fact they lag a long way behind, and only adjust themselves slowly to a rise in prices, the tendency being, so long as the tenant remains the same, for him to pay the same rent from year to year, whether in cash or kind.

II. Bengal.

The method of arriving at an estimate of the comparative incidence of land revenue favoured by the Indian Taxation Enquiry Committee is a comparison of the percentage borne by the land revenue assessment to the rental value, which phrase, it is explained, means the economic rent of the land. Recognizing the fact that, in areas in which tenancy laws entitle tenants to hold lands at rents fixed by Settlement Officers or by custom, the rent paid is less th n the economic rent, the Committee suggested that attention should be confined to competitive rents, and a comparison made of the average rate of such rents with the average rate of land revenue.

From the reports of the Board of Revenue, the Director of Land Records and the Inspector-General of Registration, to whom enquiries were

addressed, it appears that competitive or economic rents hardly exist in Bengal. The following quotation from the Board's letter explains the reason:—

"Looking at the question from the historical standpoint, the cultivator used to pay a fixed proportion of the produce, originally a sixth and subsequently much more, to the ruling power. This proportion of the produce paid to the ruling power was not rent. Subsequently farmers of revenue were introduced between the ruling power and the cultivators, but receivers of rent in the modern sense were really a British creation.

"But even the system of rent introduced since the assumption of the Diwani by the East India Company was in no sense an economic or competitive rent, but was a rent governed by custom, which could not be enhanced at will. In fact throughout Bengal there existed, and still exists, a local (*pargana*) or customary rate which can only be enhanced under certain restrictions and after certain stated intervals. These restrictions on the enhancement of rent were due to the underlying idea that the right of the proprietor in the land was not an absolute right, but that the cultivator too had certain indefeasible rights in the land. The contention that competitive cash rents do not exist in Bengal is borne out by the fact that, proportionate to the value of the produce, the rents in Eastern Bengal are lower than in Western Bengal, although the incidence of population is much higher and hence the competition for land much keener in Eastern than in Western Bengal. Nor can the rents be said to be economic rents, for the rents payable bear no apparent relation to the value of the produce. Again where waste lands or *khas* lands of the landlords are newly settled, the rent fixed is not a competitive or an economic rent, but settlement is made at the customary or local rates, and the landlord exacts a *salami* on settlement in addition to the rent.

"Apart from settled and occupancy ryots, who have a statutory right to hold at rents and rates of rent which shall not be arbitrarily enhanced, there exists also a class of non-occupancy ryots. Their numbers are however small and it appears that the rates of rent at which they hold are little, if at all, higher than the rates payable by occupancy ryots.

"Furthermore it is permissible for ryots to sublet their lands, and it may be argued that the rent at which the lands of ryots are sublet is really a competitive or economic rent. In fact the rate of rent paid by under-ryots is much higher than that paid by ryots, but the Board is inclined to think that even such rents can hardly be regarded in any real sense as competitive or economic, and in any case under-ryots are too small a class to serve as a basis for comparison.

"It may be noted that the right of an occupancy ryot to hold land at a customary rate which cannot be arbitrarily enhanced is a valuable right which is freely transferred for valuable consideration."

It may be added that the rents in estates under the Court of Wards or even in temporarily-settled and Government estates are in no way different in character from those in the permanently-settled estates, and give no better indication of the actual rental value of the land.

The Director of Land Records has expressed a similar opinion. He has given the rates of rent and revenue in certain districts in which records of rights have been prepared; a statement of these is attached to this letter, but as the rents are customary and not competitive, it is not possible to draw any practical conclusion from them. It is not in fact possible to arrive at the incidence of land revenue in Bengal by ascertaining competitive rents, because such rents do not exist.

The Board of Revenue have suggested that the competitive or economic rent might be arrived at by adding a percentage of the saleable value to the annual rent, but it would be impossible to base any reliable conclusions on the results of this method of calculation. The sale value of agricultural holdings in Bengal does not depend solely on the economic value of the land. It is influenced by various local conditions and circumstances, such as pressure of population on the land, the existence or otherwise of moneyed men in the locality, cost of cultivation, sale value of the produce, and so on. Moreover, the present fluid condition of the custom of transferability of ryoti holdings, the uncertainty of the law on the subject and the varying amount of risks which the purchasers run in different localities, due to the varying personal equation of the landlord, are very important factors in determining the sale price of ryoti holdings, The Governor in Council agrees with the Committee that the comparison of the land revenue with the gross produce involves so many factors of a varying and indefinite nature as to make it impossible to arrive at any results on which reliance could be placed, and he is therefore forced to the conclusion that it is not possible to form an estimate of the incidence of the land revenue in Bengal which could be used as a basis of comparison with other Provinces.

Statement referred to in the extract.

District.	Incidence of rent per acre.			Incidence of land revenue per acre.		
	RS.	A.	P.	RS.	A.	P.
Dacca	2	13	1	0	5	0
Mymensingh	3	8	4	0	3	8
Faridpur	2	9	2	0	8	6
Bakarganj	4	8	10	0	7	4
Tippera	3	2	2	0	7	9
Noakhali	4	4	5	0	8	6
Chittagong	5	0	0	2	14	2
Rajshahi	3	3	0	0	10	0
Midnapore	3	15	5	0	12	10
Jessore	2	7	5	0	9	5

III. Bihar and Orissa.

The first object of the Committee is to arrive at an estimate of the comparative incidence of the land revenue in different provinces. Various methods of ascertaining this have been discussed in connection with question 104 of the questionnaire of the Committee, and the others have been abandoned in favour of an attempt to find the ratio of the land revenue to the real rental value or economic rent. The latter is identified with a competitive rent. The Committee believe that it will be possible even in permanently-settled tracts to find sufficient samples of competitive rents to enable a competitive rent per acre to be worked out for comparison with the incidence of land revenue on the acre.

The local Government are satisfied that the search for the economic rent would only result in a speculative figure on which no reliance could be placed. A competitive rent in agricultural tracts is unknown. Rents are governed by custom and the tenancy laws. The non-occupancy ryots are so rare that the rents of their holdings would be no index to the competitive rents, even if they could be accurately so described; but they are not really competitive rents, as even the non-occupancy ryot is protected against unreasonable demands by the Tenancy Acts. Moreover, there are frequently special reasons to account for non-occupancy holdings; in one district, for instance, they include a large number of reclamation leases and are in consequence below the pitch of the fully controlled rents of occupancy holdings. In the case of a surrendered, purchased or abandoned holding, a landlord could no doubt let it at a competitive rent, but he prefers to settle it at a customary rate and to take a premium, the amount of which it would be very difficult to discover. Even if it were possible to obtain reliable information in a few cases, it would be insufficient in amount to form a basis of an estimate of the average economic rent. Lands are sometimes settled with the object of retaining a supply of cheap labour. Moreover, other disturbing factors will intervene in the case of isolated settlements; a man, for instance, who already holds land at a low rate, may find it worth while to take up more at a rate higher than he would otherwise be willing to pay. The same considerations apply to the information to be obtained from leases and sales. Experience has shown that, in the case of the latter in particular, the information contained in the deeds is frequently incomplete or designedly inaccurate; sales of agricultural land are generally forced by an accumulation of previous debts at excessive interest, the total of the debts is recorded as the sale price of the land, and the creditor takes the land in full discharge of the debt, since it is all he gets. Further, the transferee may have to pay a fee to the landlord and he will deduct this from the sale price. It is rarely safe to assume that the nominal sale price of land is the actual market value that a willing vendor could obtain from a willing purchaser. The local Government are satisfied that it is idle to pursue the search for the economic rent in this province, where an economic rent is not a fact but a hypothesis. A figure might be obtained which would not only be of no value, but owing to its fictitious authority, might be seriously misleading.

I am to say, however, that the local Government are ready to have a statement compiled by districts on the following lines, if the Committee think it will be of any use to them. The following factors will be taken:—

(1) total revenue;

(2) total rental value as compiled for the purpose of cess, viz., actual rents of rented lands with assumed rent for lands in possession of the landlord;

(3) average rate of rent per acre of occupancy holdings as shown in the most recent record of rights;

(4) average sale value per acre of occupancy holdings according to the registration returns of the last five years;

(5) approximate rate of economic rent, taking this as (3) plus 10 per cent of (4);

(6) ratio of (3) to (5).

The local Government, however, still consider that the result will be of no more value to the Committee than the fact already reported that the revenue realised by Government is about one-eighth of the rental value of the land as determined for the purpose of cess.

IV. Burma.

After discussing various possible methods of arriving at an estimate of the comparative incidence of land revenue in different provinces, it was suggested that a comparison of the percentage borne by the land revenue assessment to the rental value would appear most likely to afford a basis for ascertaining the incidence of land revenue. I am now to forward, for the information of the Committee, two statements containing the information required by the Committee in respect of the districts in this Province which have been settled since the year 1910. The rents entered in the first statement have been calculated on the basis of the rents on each soil class ascertained by enquiry during settlement and utilised by Settlement Officers when discussing their assessment proposals for the soil class; and have been averaged out for the whole of each district by weighting them with the corresponding total areas in each soil class in each assessment tract. In the second statement, which refers to districts which have only recently been visited by Settlement Parties, the rents entered are those ascertained on enquiry by Settlement Officers; but the rates of revenue are those in force during the expiring settlement.

Rates of land revenue are in Burma not based on rents, but on net produce, i.e., the value of the gross outturn less the cost of cultivation. Rents are, however, taken into consideration in determining the pitch of the rates. The figures for average rent are affected by the fact that on land of the lowest classes only a small area of the best land is as a rule rented. In certain districts, e.g., Minbu, Kyaukse, Mandalay and Shwebo, water-rates are included with land revenue in a consolidated assessment and the average revenue is the average of the consolidated assessment in irrigated areas and land revenue in unirrigated areas.

STATEMENT I.

Year of settlement.	District.	Average rent per acre.	Average revenue per acre.	Area for which the calculations were made.
		RS.	RS.	ACRES.
1910-13	Toungoo	9·77	2 91	346,381
1912-14	Bassein	9·03	2·89	481,868
1912-14	Henzada	10·08	3 08	493,487
1913-14	Insein	7·74	2·54	116,234
1913-15	Pegu	10·74	3·36	133,972
		9·88	3·03	289,922
1913-15	Tharrawaddy	11·14	3·67	479,321
1914-16	Kyaukpyu	6·25	1·69	183,123
1915-16	Sandoway	7·50	3·10	63,239
1913-16	Thayetmyo .. .	11·28	3·02	50,368
1914-16	Prome	9·25	1·43	313,486
1913-17	Akyab	9·75	3 13	693,710
1915-18	Sagaing	10·28	1·23	40,472
1916-19	Myaungmya	13·82	3·52	395,175
1919-20	Tavoy	13·09	2·66	87,304
1918-20	Minbu	17·80	7·73	60,098
1920-21	Mergui	8·21	3·36	20,626
1919-22	Kyaukse	9·69	5·25	124,435

STATEMENT II.

Year of settlement.	District.	Average rent per acre.	Average revenue per acre.	
		RS.	RS.	
1921-22	.. Pyapon	15·49	3·1	(Paragraph 115 of Report.)
1922-23	.. Mandalay	13 54	5·04	(Statement 16 and paragraph 44 of Report)
1918-23	.. Shwebo	7·00	3·69	
1923-24	.. Katha	9·31	1·14	(Statements 16 and 19 B).

V. Assam.

In the preparation of an estimate of comparative incidence of land revenue, the comparison of soil units would give no information of value even in cases where the material is available, unless it so happened that the central soil factor in each group applied to land of exactly the same class, the same fertility and the same nature of soil. A central soil factor on which the whole assessment of a group is based is supposed to be the factor fixed for the most common kind of fairly productive land found in the group. There is no provision to ensure, nor is there any necessity to ensure, that in different groups the same kind of soil is taken as the class which is to form the central soil factor. Consequently no comparison of the kind indicated would be of any great value, and as the settlements in India on the soil unit system are probably not very numerous, the information to be gained from an examination of comparative assessments would not be of any great value as a means of comparison between different provinces.

The fifth system mentioned by you, viz., the comparison of the percentage borne by land revenue to gross produce, would not be a sound basis for the comparison of incidence of land revenue unless one was in a position to state accurately the gross produce of each kind of land in every village. Nothing is more difficult than to assess for any field the amount of the normal gross produce. The actual gross produce varies from season to season and is influenced by a number of considerations apart from the relative fertility of the different fields. It is affected by, for instance, cattle mortality, by the difficulty of obtaining plough cattle; it is also affected by the circumstances of the cultivator such as incidental sickness. It is true that in settlement reports the revenue assessed is compared with the estimate of the normal gross produce. But every settlement officer knows that this comparison is only used as a guide, and a very rough guide, to operate as a check against over-assessment. Consequently, the gross outturn assumed by the settlement officer is very often a quite low figure and never has any pretension to represent the actual gross outturn. Nor are there figures available showing from year to year the estimated gross produce of any area. Even in ryotwari areas where land records are maintained this figure would be difficult to calculate, and in permanently-settled areas for which we have no detailed figures the estimates of produce are merely an approximation of very little value. Consequently to use imaginary estimates of gross produce for the purpose of a comparison between provinces of the incidence of land revenue would be misleading because the facts on which the comparison would be based would be inaccurate. Therefore it seems to the Government of Assam that no useful comparison can be made on materials of this kind or on this basis.

There is another reason why a comparison of the land revenue with the gross produce of land would not be a useful basis of comparison. It would be difficult to distinguish how much of the total amount of land revenue in any province relate to town land, trade sites, residential sites, waste land and ordinary agricultural land. Consequently the total figure of land revenue, if compared with total gross produce of any area, would yield a figure which would not be accurate if one wished to arrive at a comparison between the land revenue assessed on agricultural land and the gross produce of that land.

The last suggestion is that a comparison should be made of the percentage borne by the land revenue assessment to the rental value of land, and it is further laid down that the rental value to be considered is the economic rental value as distinguished from the actual rents paid in cases where these actual rents differ from the economic rent. The Taxation Enquiry Committee asks the Government of Assam to undertake an enquiry all over the province in order to examine the rents actually paid to differentiate in each case the economic rents from the rest, and then to find out the incidence of the land revenue, presumably per acre, and the proportion it bears to the economic rent. It must be remembered that in the districts of Goalpara and Sylhet, with the exception of a very small area, there are no land records and no materials in existence on which such enquiries could be based. In the ryotwari areas of the Assam Valley a very large proportion of the land cultivated is held by the ryots direct from Government on the revenue fixed by the Settlement Officer. Where it is sublet most of the rents are fixed without any relation at all to the considerations of economic rent, but lands are leased out in various ways in which very frequently obligations of service are taken into consideration in arriving at the terms of the lease. To make an enquiry of the nature indicated would require a very large and a highly trained staff if the materials available were to be properly handled. The enquiry would take years to complete, and even so it is to be doubted whether the results would be accurate. Obviously in a case like this inaccurate results would have extremely little value. The Government of Assam therefore think that it would be a mistake to devote public money to expenditure on an enquiry of this nature, and doubt whether even if they were prepared to put forward a supplementary demand for the purpose the Legislative Council would vote this. The appointment of a small temporary special staff is at present out of the question, because the staff would necessarily have to be highly qualified and the Government have not the officers available to provide such a staff.

VI. Punjab.

I am to say that the importance of gauging the incidence of land revenue by its relation to rents has long been recognized in the Punjab, where the theoretical maximum standard of assessment is half the landlord's net assets. Whenever therefore the land revenue of a district is reassessed, it is the duty of the Settlement Officer to examine all the available material bearing upon rents and to form an estimate of net rentals circle by circle and ultimately of the district as a whole. In statement No. I, which forms an enclosure to this letter, the relevant figures pertaining to the most recent eleven settlements have been collected. A glance at column (9) of this statement will show that, at the time of imposition, the land revenue on an area of over eight million acres amounted on the average to about one-quarter of the rental, the figure varying in different districts from 19 to 36 per cent.

Owing to agricultural and economic developments, into which it is not here necessary to enter in detail, there has been a general tendency for the gross rental to rise during the currency of settlements with the result that the land revenue absorbs a considerably smaller percentage of it at the end of the prescribed term than it did at the beginning. Column (8) of statement No. I therefore shows the proportions which the expiring assessment of the eleven districts in question bore to the landlord's net rental as estimated by the Settlement Officer. These ranged from 13 to 27 per cent, and averaged 17.8 per cent. It appears therefore that an assessment which at the time of its imposition amounts to 25 per cent of the rental falls during the term of settlement, which in the districts in question averaged about twenty years, to 17.8 per cent, and at any one time the percentage will be somewhere between these two figures, say 21 per cent.

It so happens that of the eleven districts specified in statement No. I no less than six belong to the same Division, that of Multan, five enjoy irrigation from perennial canals recently constructed and four more from inundation canals. It is possible therefore that they are not typical of the province as a whole and that development in them has been more than usually rapid. A further element of uncertainty is introduced by the term of settlement, which is ordinarily never less than twenty years and is very often thirty years. The Financial Commissioner has therefore extended the enquiry to other districts and the results are tabulated in statement II which shows that for fifteen other districts the percentage of net assets absorbed by the current assessment at the time of its imposition ranged from 20 to 39 per cent, and was generally between 25 and 33 per cent, and that the expiring assessment amounted to between 13 and 28 per cent of it. The figures in this statement relate to districts in all parts of the Province, irrigated and unirrigated, and the term of the expiring settlement was in every case the normal twenty or thirty years. The Financial Commissioner is therefore of opinion that the conclusion reached in the last paragraph that the land revenue at any one time amounts to slightly over one-fifth of the estimated net rent, is sufficiently accurate.

It must be remembered that in this Province the great majority of rents consist of a share of the produce which is taken at the threshing-floor, and therefore varies greatly from place to place and from season to season. Consequently in framing their estimates of landlords' assets, Settlement Officers have seldom had any reliable cash rents to guide them, and have therefore been generally forced to base their conclusions on more or less hypothetical calculations of the value of the landlords' share of the produce. In these calculations the Settlement Officer tends naturally to be cautious, and the final result is usually a very conservative estimate of actual rents, which gives the landlord the benefit of any reasonable doubt. It is probable therefore that the land revenue certainly does not exceed, and probably falls short of one-fifth of actual rents. This is particularly true at the present time in districts which have not come under settlement since the War. The very rapid rise in the prices of agricultural produce has carried with it a corresponding rise in rents, while land revenue has remained stationary, except in the few cases where the term of settlement happens to have come to an end. It is unlikely that the land revenue at the present time exceeds one-sixth of the rent, but as more and more assessments come to be revised a reversion to the one-fifth may be expected.

Statement I.

Number and district.	Tahsil or tract.	Cultivated area.	Old assessment.	Period intervening between old and new assessment.	New assessment.	Net assets.	Percentage of column (4) on column (7).	Percentage of column (6) on column (7).
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
		ACRES.	RS.	YEARS.	RS.	RS.		
1. Sheikhupura.	Canal irrigated ex Raya villages.	64,091	1,39,806	20	1,40,956	6,21,078	22·5	22·7
	Ex Khangah Dogran old villages.	223,603	3,86,072	20	5,92,965	20,04,920	19·3	29·5
2. Gujranwala.	Gujranwala Tahsil.	426,062	5,64,873	20	8,45,704	33,76,000	16·7	25·0
3. Muzaffargarh	All Tahsils	729,220	8,40,062	20	9,01,237	26,10,736	32·3	34·5
4. Shahpur ..	Lower Jhelum Canal Colony.	679,567	14,62,699	..	20,96,675	66,05,078	22·1	31·7
5. Lyallpur ..	Wh le district except Rakh Branch.	1,045,001	33,30,098	10	49,17,843	25,364,238	13·1	19·3
6. Jhang .	Lower Chenab Colony.	228,934	4,90,921	10	6,74,931	33,24,712	14·7	20·3
7. Hissar ..	Sirsa Tahsil ..	849,505	2,32,705	20	3,55,600	16,99,400	13·6	20 4
8. Montgomery.	Dipalpur and Pakpattan Tahsils.	542,825	3,66,806	20	5,58,129	17,55,438	20·8	31·9
9. Dera Ghazi Khan.	All Tahsils ..	1,244,000	5,26,461	20	6,94,060	25,23,400	20·8	27·5
10. Multan ..	Do. ..	1,204,951	16,39,813	30	21,75,313	60,32,900	27·1	36·0
11. Ambala ..	Do. ..	736,027	11,47 547	30	14,63,560	58,11,660	19·7	25·1
		7,973,786	1,11,27,363	..	1,54,16,973	6,17,29,560	18	25

Statement II

Number and district.	Tahsil or tract.	Cultivated area.	Old assessment.	Period intervening between old and new assessment.	New assessment.	Net assets.	Percentage of (4) on (7).	Percentage of (6) on (7).
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
		ACRES.	RS.	YEARS	RS.	RS.		
1. Hissar ..	All Tahsils except Sirsa Tahsil.	2,055,692	6,09,305	20	8,42,937	25,31,824	24·5	33·3
2. Rohtak ..	All Tahsils ..	962,664	9,52,430	30	11,86,020	34,37,800	27·5	34·5
3. Karnal ..	Do. ..	1,122,053	10,67,955	30	13,69,135	35,07,728	30	39·03
4 Ludhiana ..	Do. ..	891,932	11,04,651	30	14,99,572	57,04,000	19·5	26·2
5. Ferozepore.	Do.	2,208,357	12,47,843	30	18,90,959	94,84,000	13	19·9
6. Lahore ..	Do ..	1,173,100	9,33,579	20	14,85,285	66,39,220	14	22
7. Amritsar ..	Do. ..	750,323	12,70,000	20	15,97,981	62,86,000	20	25·5
8. Gurdaspur ..	Do. ..	824,202	15,28,130	20	18,55,346	54,38,000	28	34
9. Hoshiarpur.	Do. ..	545,620	14,40,426	30	18,65,861	73,58,000	19·5	25·5
10. Jullundur ..	Do. ..	667,598	14,78,052	30	19,62,313	91,98,000	16·5	22·5
11. Sialkot ..	Do. ..	901,634	14,80,361	30	17,83,237	56,32,000	26	31·5
12. Rawalpindi.	Do. ..	599,004	5,46,101	30	6,75,400	21,71,274	25·05	31
13. Attock ..	Do. ..	1,036,269	5,52,125	*20	6,74,359	10,17,472	27	33
14. Jhelum ..	Do. ..	1,028,801	6,09,943	30	7,59,139	11,38,663	27	33·5
15. Mianwali ..	Do. ..	708,815	3,02,114	20	3,81,368	5,78,591	26	33

* Except Tallagang Tahsil where the period was 24 years

VII. Central Provinces.

The Central Provinces Government agrees with the view of your Committee that the fairest way of estimating the comparative incidence of land revenue in different tracts is by comparing it with the economic rental of the land. But, though this method would give good results, if practicable, it is open to doubt whether the information available regarding the rents paid by the various classes of under-holders will provide a reliable basis for the deduction of the economic rent.

In order that the problem may be understood it is necessary to give a brief description of the various classes of payers of revenue and of rent and of the nature of their payments. If favoured payments such as the *takolis* of zamindars, which are fixed at varying proportions of the *kamil-jama,* or full land revenue, of an ordinary malguzar, be excluded (*vide* page 80 of Mr. Dyer's introduction to the Land Revenue and Settlement Systems of the Central Provinces) the revenue payments made fall into three main classes—

(1) The revenue paid by the Central Provinces malguzars to the Government, which speaking generally, is one-half of:—

- (a) their rental receipts,
- (b) the valuation of the home farm made at the rates at which rents are assessed;
- (c) an estimate of miscellaneous income.

(2) The revenue payable by plot proprietors (*malik makbuzas*) in the Central Provinces, on which the malguzars receive a commission for collection.

(3) Payments made by ryotwari holders. In Berar these payments, though low compared with the annual value of the land, are often substantial, as they are made for good land which has been in occupation for many generations, but in the Central Provinces they are usually small in amount and low in rate, as the ryotwari areas are situated in the more backward tracts and have mostly only recently been redeemed from waste, and are also, as a rule, intrinsically poorer than ryotwari land in Berar.

The payments in the nature of rent may be classified as follows:—

(1) The rent fixed by the Settlement Officer under the Central Provinces Tenancy Act on the holdings of tenants holding under malguzars: these rents fall far short of the economic rent.

(2) The rent paid by the tenants of the ryotwari holders, which is fixed by private agreement.

(3) The rent paid by the sub-tenant of the tenant in malguzari villages in the Central Provinces. This is also fixed by agreement.

(4) The rent paid by tenants of the home farm (*sir* land) in the malguzari villages.

Originally it was intended that the payments of *malik makbuzas,* ryots and malguzars' tenants should be as near an approach to full rental valuations as could be expected to be paid year in and year out, but a succession of long term settlements has made the fulfilment of this intention impossible. In the Central Provinces rents are now customary payments liable to revision by the Settlement Officer when the land revenue is revised and the revenue based on them payable by malguzars leaves out of account such items as consent money and *nazarana,* which now represent an appreciable part of the payment for tenant right. It was at one time hoped that malguzars would make use of the facilities provided by the tenancy law for enhancing tenants' rents during the term of settlement on the ground that the value of land had risen: but this hope has not been realised. The evidence of sub-rents and leases of home farm land in the Central Provinces and of leases of survey numbers in Berar are a clear indication that the rents payable to malguzars are far below the level of economic rent, and they are clearly of no use for the purpose of comparing the incidence of land revenue in different tracts. We must therefore confine attention to the rents paid by the tenants of the home farm, and the sub-tenants of tenants in malguzari villages and to the tenants of ryots in ryotwari villages of the Central Provinces.

The registration of agricultural leases for not more than one year is not compulsory under the Indian Registration Act, and in fact relatively few documents are executed when tenant land is sublet or home farm or ryoti holdings are leased. Registration offices therefore help little towards the examination of these transactions. It is true that they are entered in the village papers, but there is abundant evidence that the record of such rents is not reliable, specially if settlement operations are in progress or in near prospect. Apart from definite instances of concealment of the true price paid, which come to light, a comparison of the figures entered for different, but similar villages, shows that in many other instances there must be concealment. It is also common to record fields as sublet or leased on kind when in reality a high cash payment has been fixed. Concealment, however, is not the only impediment. The transaction may be complicated by previous financial relations between the parties being taken into account, as for example when a man leases his field in satisfaction of a debt, and favoured leases and sub-leases to relatives are common. Land is moreover often taken on lease or sub-lease by substantial men who hold other land in their own names at low rates and can therefore afford to pay more than a fair rent for this extra land. Detailed examination in the Nagpur district showed that the typical man who took land on sub-rent was the small substantial cultivator, who gave more as sub-rent than he would otherwise have been able to offer simply because his own rent was low, and what he was ready to give determined the price which landless men had to pay. Speculation also raises sub-rents and lease money, especially when the price of a commercial crop like cotton has been high.

It is possible that in other parts of India the same or similar considerations equally vitiate the evidence of sub-rents and leases as a direct indication of the incidence of the land revenue. If so, the figures which follow may be of use towards instituting a comparison between incidences in this province and in others, but they cannot be used to prove that the land revenue bears a certain ratio to the economic rent. The Committee have already been supplied with a copy of Mr. Greenfield's report on the Khamgaon and Malkapur taluks in Berar. Paragraphs 40 to 42 of that report show that, even after extraordinary transactions have been excluded, leases for the period 1918—23 average about ten times the ryotwari assessment. As these two taluks are prosperous with flourishing cotton markets, the figures may be taken as maxima. In the Central Provinces malguzari area the rents of tenants, which speaking generally are historically the same as the revenue payments of Berar ryotwari holders, range from that figure downwards, and in the most backward parts, where the demand is still more for cultivators than for land, leasing and sub-letting almost disappear, though the casual field fetches about twice its valuation. In a province like the Central Provinces and Berar, where conditions vary very much, economically and historically, from district to district, and where there are four main crop areas, namely, the cotton, rice, wheat and minor millet tracts, it is useless to attempt to give an average figure.

VIII. United Provinces.

A completely accurate estimate of the incidence of the land revenue could also only be obtained after a lengthy investigation. As is shown by the accompanying extract from a note by the Board of Revenue* of these provinces the conditions in regard to rent and revenue differ from division to division and indeed from district to district. No summary conclusion can give full weight to so many divergent factors. It is, however, possible to prepare a statement which will indicate the general position with substantial accuracy.

The statement which is forwarded with this letter has been derived from the statistics included in the United Provinces Land Revenue Administration Reports of certain selected districts. Columns (3)—(4) of the statement show the area and recorded rental of the holdings of those tenants who are not protected by occupancy or other rights and whose rent is therefore determined by supply and demand. The figure of rental incidence in

*Not printed.

column (5) takes no account of short collections, and on the other side it is to some extent vitiated, and particularly so in the Gorakhpur division, by the omission of premia or *nazaranas* and of unrecorded cesses. It may be assumed that the figure for the Gorakhpur division lies between the figure for Benares and Fyzabad.

In columns (6)—(12) this figure of incidence is tested by the results in districts which have come under settlement. These columns show approximately how far it is safe to apply the non-occupancy or unprotected incidence to the total holdings area. Where the settlement report of the exemplar district shows that the incidence on the total holdings is greater or less than the incidence on the non-occupancy or unprotected holding, the incidence in column (5) is corrected by the same percentage. This process establishes in column (4) a general figure of incidence which can be taken as approximately accurate. This rental incidence is then applied to the total holdings area and a rental valuation exhibited in column (16) with which it is reasonably safe to compare the total revenue. It must, however, be admitted that this method does not give satisfactory results in the case of Gorakhpur, in which division the land revenue percentage of 42 per cent has been exaggerated by the low recorded rental in the unprotected holdings of Gorakhpur. It has also been necessary to exclude the hill districts of the Kumaun division as the necessary figures are not available. It was, however, estimated at the last settlements that in Kumaun the economic rent was between three and four times the amount of the land revenue, and since prices have risen greatly in the interval, the incidence of the land revenue must now be still lower.

The figures in the statement give an average rental valuation rate of Rs. 6.7 per acre and an average revenue of Rs. 1.5, or 27 per cent of the former figure. The Government of the United Provinces think that this percentage of rental incidence is fairly close to the facts. It may be compared with the complete figures recorded for the estates which are under the management of the Court of Wards, where the rents are generally lower than estates under private management. The total demand from the Court of Wards estates, on account of land revenue, rates and cesses amounting to 45¾ lakhs, represents an incidence of 31.7 per cent on the current rental demand and 33.9 per cent on the current rental collection of the estates. The figure of 27 per cent which the statement establishes may also be compared with the 45 per cent on assets which has been the standard on which the settlement officers work in assessing the demand for land revenue. But this figure of 45 per cent is applied after making very large deductions from the gross assets and takes no account of *nazarana* or cesses. Consequently on the whole it is fairly safe to assume that, even after allowing for short collections, the land revenue does not exceed 30 per cent of the total rental valuation.

STATEMENT (hundreds omitted).

Serial No.	Division	Area and rental of unprotected tenants in Agra and of statutory tenants and their heirs and others in Oudh.			Area and vlauation of one select district in each division.						
						Non-occupancy.			Total holdings.		
		Area	Ren	Incidence.	Name of selected district	Area.	Valuations.	Incidence.	Area.	Valuations.	Incidence.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
		ACS.	RS.	RS.		ACS.	RS.	RS.	ACS.	RS.	RS.
1	Meerut ..	11,71	15,522	13 3	Mazaffernagar ..	1,84	11,05	6·02	7,02	42,24	6·02
2	Agra	15,61	12,276	7·9	Muttra	2,31	14,64	6·3	7,32	40,67	5·6
3	Rohilkhund ..	17,34	12,414	7·2	Bareilly	1,17	4,50	3·86	7,74	33,20	4·29
4	Allahabad ..	13,79	8,923	6·5	Fatehpur ..	1,02	4,65	4·57	6,04	29,73	4 92
5	Jhansi ..	20,13	5,847	2·[illegible]	Banda established.	2,59	6,56	2·53	7,45	19,68	2·64
					Nautor	1,05	98	·93	1,68	1,57	·93
6	Benares ..	7,99	3,920	4·9	Average of Basti and Fatehpur.	2,16	11,88	5·5	9,64	49,91	5·2
7	Gorakhpur ..	11,52	5,582	4 8	Basti	3,30	19,12	5·8	13,24	70,10	5·3
8	Lucknow ..	34,43	24,673	7·1	Rae-Bareli ..	4,54	27,44	6·05	5,94	36,02	6·07
9	Fyzabad ..	34,58	24,025	6 9	Bahraich ..	3,32	14,89	4·5	6,86	26,24	3·8

Serial No.	Division.	Percentage of difference between columns (9) and (12).	Incidence in column 5 adjusted to the extent of difference in column (13).	Total holdings area.	Valuation of column (15) at the rate in column (14).	Total revenue including nominal revenues.	Percentage of column (17) to column (16).	Incidence of revenue (column 17) per acre of holdings area (column 15).
		(13)	(14)	(15)	(16)	(17)	(18)	(19)
			RS.	ACS.	RS.	RS.		RS.
1	Meerut ..	Equal.	13·3	38,01	5,05,48	1,01,17	20	2·7
2	Agra ..	—11	7·0	39,63	2,77,41	85,65	31	2 2
3	Rohilkhund ..	+11	7·9	50,05	3,95,88	85,95	22	1·7
4	Allahabad ..	+ 8	7·0	40,97	2,86,80	88,48	31	2·2
5	Jhansi ..	+ 4 Equal.	3 0	36,77	1,10,30	35,14	32	1·0
6	Benares ..	— 5	4·7	32,75	1,53,92	45,22	29	1·4
7	Gorakhpur ..	— 9	4.4	45,92	2,02,05	85,65	42	1·9
8	Lucknow ..	Equal.	7·1	48,74	3,46,02	83,40	24	1·7
9	Fyzabad ..	—16	5·8	51,33	2,97,71	94,96	32	1·8
			To ..	38,417	2,57,507	7,05,12	27	1·8
	Incidence per acre of holdings area ..			6·7	1·8			

IX. Madras.

I am directed to enclose a statement (Annexure A) summarising the results of an enquiry held ten years ago in order to ascertain the proportion which the assessment on the land bears to its rental value.

More recent figures are available for three districts in which resettlement has been made, as follows:—

		Multiple of rental to assessment.
Vizagapatam, 1912-1916	.. ..	4·15 (average ratio).
Tanjore, 1914-1918	.. ..	Single crop wet 6 times. Double crop wet 4·5 times. Dry varies from 7 to 16 times.
Trichinopoly, 1918-1920	.. ..	Approximately 10 times for single crop wet.

Detailed figures for Trichinopoly as shown in the Trichinopoly Resettlement Scheme Report (G.O. No. 177, dated 29th January 1925) are also enclosed. (Annexure B.)

A comparison of the two sets of figures shows that the ratio of rental to assessment has risen considerably in the last fifteen years.

Annexure A.

Name of district.	Average size of holdings.	Density of population per square mile.	Density of population per 1,000 acres of cultivated area.	Percentage of agricultural population.					Multiple of rental to assessment.			
				Cultivating land-owners and dependents.	Cultivating tenants and dependents.	Total of columns (5) and (6).	Agricultural labourers and dependents.	Total agricultural population.	Single crop wet lands without wells—cash rentals.	Single crop wet lands without wells—grain rentals.	Double crop wet lands without wells—cash rentals.	Double crop wet lands without wells—grain rentals.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
	ACS.											
Ganjam	4·69	265	1,093	23·7	23·5	47·2	19·5	70·8	4·2	6·3	.	..
Vizagapatam ..	9·94	185	*	12·0	43·5	55·5	17·5	75·3	3·8 4·6	4·9 ..	.. 3·3	.. 4·9
Godavari	8·74	266	*	14·9	18·8	33·7	31·0	68·5	3·6	4·0	..	3·4
Kistna	7·71	338	1,917	25·9	12·5	38·4	29·5	72·1	2·8	4·2	2·4	3·1
Guntur	7·38	296	876	43·6	2·8	46·4	19·0	69·5	3·0	5·3	..	..
Kurnool	10·13	123	463	40·2	3·6	43·8	24·2	73·1	3·7	3·1	5·3	3·3
Bellary	14·68	170	442	49·8	4·1	53·9	18·3	74·3	6·1	5·1	4·0	10·6
Anantapur ..	11·71	149	518	37·3	7·4	44·7	21·6	69·0	4·2	6·3	2·8	4·2
Cuddapah	4·99	152	864	41·6	2·4	44·0	22·0	71·5	2·8	2·8	2·6	4·1
Nellore	7·8	167	905	22·8	16·2	39·0	24·0	65·9	2·3	3·7	..	..
Chingleput ..	4·18	458	1,824	34·3	12·6	46·9	20·0	68·1	8·6	5·1	4·2	7·0
South Arcot ..	3·61	561	1,650	45·7	10·4	56·1	28·3	81·2	5·3	5·9	4·8	5·3
Chittoor	4·80	218	1,228	24·5	33·4	57·9	15·0	75·4	5·0	4·9	2·2	4·2
North Arcot ..	4·14	399	1,696	44·0	9·6	53·6	16·7	73·5	4·9	6·3	4·8	5·0
Salem	6·51	289	† 381	52·0	5·6	57·6	12·9	73·0	..	..	3·8	6·7
Coimbatore ..	9·69	294	1,091	39·9	5·5	45·4	17·0	63·7	6·9 6·8	9·1 6·9	6·4 6·8	7·6 6·8
Tanjore	4·80	634	1,767	26·8	13·3	40·1	17·9	62·7	3·9	5·0	5·5	4·6
Trichinopoly ..	5·63	427	1,646	42·7	6·8	49·5	14·6	65·3	8·0	7·0	6·6	6·3
Madura (ex-Periyar).	5·80	393	1,923	48·7	6·3	55·0	18·7	74·9	7·4	8·1	7·2	8·4
Do. (Periyar) ..	..	..	..	..	..	..	..	...	5·8	5·7	11·8	7·6
Ramnad	4·76	343	1,517	50·7	7·1	57·8	6·3	65·5	5·0	6·1	8·5	9·0
Tinnevelly ..	5·40	411	2,270	29·1	15·9	45·0	8·5	57·1	9·6	6·2	5·6	5·9

* Information not available. † Unreliable.

Note.—The figures in columns (2) and (4) to (9) have been adopted from the Statistical Atlas.

ANNEXURE A—*contd.*

Name of district.	Multiple of rental to assessment—*contd.* Dry lands without wells. (14)	Mixed leases of single and double crop wet lands without wells—cash rentals. (15)	Mixed leases of single and double crop wet lands without wells—*grain rentals.* (16)	Mixed leases of wet and dry lands without wells—cash rentals. (17)	Mixed leases of wet and dry lands without wells—grain rentals. (18)	Single crop wet lands with wells—cash rentals. (19)	Single crop wet lands with wells—grain rentals. (20)	Double crop wet lands with wells—cash rentals. (21)	Double crop wet lands with wells—grain rentals. (22)	Dry lands with wells. (23)	All classes of leases taken together. (24)
Ganjam	5·4	..	..	3·2	6·5	..	..	..	..	6·1	5·86
Vizagapatam ..	4·4	..	..	3·8	4·7	..	..	..	..	..	4·8
	5·2	..	..	3·8	3·4	..	..	3·7	..	15·4	3·8
Godavari	5·1	..	..	3·9	4·3	4·1	5·1	..	..	5·5	4·1
Kistna	4·7	..	3·7	3·4	4·2	..	6·2	..	..	6·1	4·1
Guntur	4·7	..	..	2·3	3·4	..	..	..	..	8·1	4·8
Kurnool .. .	4·6	3·1	..	3·8	3·6	7·4	..	..	..	8·6	4·6
Bellary	3·7	6·6	..	3·6	5·8	..	..	..	..	4·3	4·29
Anantapur	5·2	..	3·9	2·9	13·5	3·7	..	2·7	..	14·3	5·1
Cuddapah	4·0	..	1·5	3·0	2·3	2·5	2·9	4·0	6·3	5·6	3·64
Nellore	2·6	..	..	2·8	3·4	..	4·4	..	..	6·5	3·45
Chingleput ..	4·7	2·7	4·2	3·3	3·6	6·1	9·5	5·8	2·9	10·4	4·36
South Arcot ..	9·1	5·1	6·1	5·4	5·7	8·8	6·4	10·4	2·5	15·1	6·5
Chittoor	9·0	2·0	3·6	3·4	4·2	5·6	3·9	1·9	3·5	12·1	4·37
North Arcot ..	5·2	5·5	5·1	3·8	4·7	8·6	6·1	6·4	5·5	10·3	5·39
Salem	5·2	..	..	3·9	4·6	..	..	4·2	8·1	8·4	6·3
Coimbatore ..	6·6	9·5	9·0	6·3	10·0	6·6	5·5	7·8	6·9	9·3	8·0
	8·0	15·2	7·7	9·5	8·1	5·1	..	13·2	9·1	11·4	9·1
Tanjore	6·7	3·9	4·5	3·3	4·3	..	5·6	5·5	..	18·2	4·6
Trichinopoly ..	6·2	5·5	5·3	6·0	5·2	8·1	8·5	7·2	6·5	10·8	6·5
Madura (ex-Periyar).	9·5	6·0	12·0	9·3	8·8	8·7	4·8	..	9·0	11·2	9·36
Do. (Periyar) ..	..	4·5	6·9	..	..	..	..	..	..	..	8·31
Ramnad	10·1	6·0	..	5·2	6·6	5·2	7·2	8·1	6·9	16·5	8·1
Tinnevelly ..	6·5	6·5	7·0	4·1	7·1	6·0	7·4	6·6	9·9	19·4	5·8

ANNEXURE B.

Statement showing the net lease value per acre and to ratio to the assessment in Nirarambam single crop lands in the six taluks of the Trichinopoly district.

Money rate in rupees per acre. (1)	Period of years. (2)	Trichinopoly. Net lease value in rupees per acre. (3)	Trichinopoly. Ratio of net lease value to assessment. (4)	Kulittalai. Net lease value in rupees per acre. (5)	Kulittalai. Ratio of net lease value to assessment. (6)	Musiri. Net lease value in rupees per acre. (7)	Musiri. Ratio of net lease value to assessment. (8)	Lalgudi. Net lease value in rupees per acre. (9)	Lalgudi. Ratio of net lease value to assessment. (10)	Udaiyarpalaiyam. Net lease value in rupees per acre. (11)	Udaiyarpalaiyam. Ratio of net lease value to assessment. (12)	Perambalur. Net lease value in rupees per acre. (13)	Perambalur. Ratio of net lease value to assessment. (14)
10 ..	1 1895-99 ..	51	5	63	6	..	..	..	..	..	..	..	..
	2 1912-17 ..	75	8	60	6	80	8	..	..	..	..	..	..
	3 1918-20 ..	116	12	148	15	88	9	..	..	..	..	..	..
9 ..	1 1895-99 ..	38	4	..	..	40	4	46	5	..	..	..	..
	2 1912-17 ..	69	8	49	5	92	10	72	8	..	..	..	..
	3 1918-20 ..	100	11	45	5	69	8	117	13	..	..	..	..
8 ..	1 1895-99 ..	39	5	32	4	43	5	37	5	..	..	..	..
	2 1912-17 ..	61	8	49	6	74	9	51	6	..	..	..	..
	3 1918-20 ..	114	14	79	10	114	14	86	11	..	..	..	..
7 ..	1 1895-99 ..	..	..	55	5	28	4	35	5	..	..	..	..
	2 1912-17 ..	..	..	61	9	77	11	46	7	..	..	..	..
	3 1918-20 ..	..	..	79	11	64	9	65	9	..	..	..	..
6 ..	1 1895-99 ..	18	3	..	..	..	..	17	3	14	2	..	..
	2 1912-17 ..	39	7	..	..	32	5	44	7	..	..	..	..
	3 1918-20 ..	29	5	..	..	74	12	74	12	42	7	..	..
5 ..	1 1895-99 ..	..	..	..	..	..	..	24	5	..	..	..	..
	2 1912-17 ..	..	..	38	7	16	3	56	11	20	4	..	..
	3 1918-20 ..	..	..	93	19	37	7	76	15	15	3	..	..
4·8 ..	1 1895-99 ..	..	..	..	..	..	..	..	..	..	..	..	..
	2 1912-17 ..	..	..	42	9	..	..	44	10	15	3	..	..
	3 1918-20 ..	..	..	..	..	..	..	..	..	..	..	..	..
4 ..	1 1895-99 ..	..	..	..	..	..	..	..	..	..	..	..	..
	2 1912-17 ..	..	..	37	9	..	..	..	..	..	..	..	..
	3 1918-20 ..	..	..	59	15	..	..	..	..	..	..	..	..

APPENDIX VI

Return from duties on different classes of goods.

Chapter VI—Taxes on Consumption—Customs.

(Vide pages 120–121, paragraph 145, of Volume I.)

The articles commonly imported, according to the sea-borne statistics may be grouped under three heads :—

(1) Articles of direct consumption,

(2) Means of production, and

(3) Raw materials of industry.

2. The articles included under item No. (1) may again be subdivided into those which enter into direct consumption of the general population and those which are mainly confined to the richer classes. The following is an attempt to classify the articles on these lines. It is obvious that any such classification can only be made on a rough basis, since many of the articles consumed mainly by the richer classes are also used to some extent by the poorer sections of the population.

I. Articles of direct consumption—

Names of articles.	Number in the Tariff Schedule.
(a) *General population*—	
1. Sugar	19
2. Kerosene oil	31
3. Chemicals, drugs and medicines	63, 66
4. Glass bangles and beads	85
5. Cotton piece-goods	103
6. Matches	113
7. Fireworks	119
8. Oilcakes	125
(b) *Richer classes*—	
1. Articles of food and drink, excluding sugar ..	1—14, 17, 20—25
2. Tobacco (manufactured and unmanufactured) and cigars and cigarettes	26—28
3. Gums, resins and lac	30
4. Seeds	39
5. Hemp (raw and manufactured)	43, 106
6. Flax (raw, twist, yarns, manufactured, etc.)..	43, 106
7. Silk (piece-goods and manufactured silk waste and raw silk, yarn, noil, thread, etc.) ..	43, 106-107
8. Wood and timber	46
9. Miscellaneous (canes, shells, etc.)	47—53 A
10. Ivory	49, 121
11. Jewellery (including precious stones) ..	51, 52, 122
12. Apparel	55
13. Arms, ammunition and military stores and explosives	57—61
14. Conveyances	67
15. Motor-cars, motor-cycles, etc.	68
16. Cutlery and electroplate ware	70, 72
17. Clocks and watches	71
18. Electric goods (gears, switches, etc.) ..	74

Names of articles.	Number in the Tariff Schedule.
(b) *Richer classes*—cont.	
19. Musical Instruments	77
20. Furniture, cabinetware, etc.	82
21. Glassware and Earthenware	83—84
22. Hides, Skins and Leather	86
23. Gold and silver (plate, thread and other manufactures)	96—97
24. Metals other than iron and steel ..	98
25. Paper, paste-board and stationery	99
26. Hosiery	106; 107 B
27. Yarns and textile fabrics not otherwise specified	106
28. Jute (twist-yarn and manufactures)	106
29. Haberdashery and Millinery	106
30. Work of Art	109-110
31. Brushes and Brooms	113
32. Candles	115
33. Cinematograph films	117
34. Mats and matting	124
35. Oilcloth and floor cloth	126
36. Perfumery	128
37. Tyres and tubes for motor-cars, motor-cycles, etc., and other manufactures of rubber ..	130, 135
38. Polishes and compositions	131
39. Printing and lithograph materials	132
40. Prints, engravings, etc.	133
41. Smokers' requisites	137
42. Soap	138
43. Starch and Farina	139
44. Articles made of stone and marble	140
45. Toilet requisites	141
46. Toys, games, etc.	142
47. Articles wholly or mainly manufactured, not otherwise specified	143
48. Coral	145
49. Umbrellas	148
50. All other articles not otherwise specified ..	149

II. Means of production—

1. Hardware, ironmongery and tools	75
2. Other implements, instruments, etc. (excluding musical instruments)	76, 78, 80
3. Machinery	87, 88
4. Machinery to be worked by manual labour ..	89
5. Building and Engineering material	114
6. Furniture, tackle, etc., for vessels	120
7. Packing for engines and boilers	127

III. Raw materials of industry—

1. Coal, coke, etc.	29
2. Iron and steel	32, 90—93
3. Mineral oils	34 A, 35, 36
4. Oils (animal, essential, etc.)	37
5. Tallow and Stearine wax	40
6. All raw material and articles not otherwise specified	54
7. Dyes, colours and paints, etc.	81
8. Cotton yarn and twist	104, 106
9. Unspecified yarns, textile fabrics and woollen yarns (manufactured)	106
10. Cordage, ropes and twine	118
11. Pitch, tar and dammer	129

3. The following table has been prepared on the above basis distinguishing the taxes on articles of direct consumption from those on means of production and raw materials, so far as the years 1913-14 and 1924-25 are concerned.

—	1913-14.	1924-25.	Percentage of increase.	Index number of prices.		Percentages in column (4) corrected with reference to the price index of 1913.
(1)	(2)	(3)	(4)	(5)		(6)
	LAKHS. RS.	LAKHS. RS.		1913	1924	
1. Articles of direct consumption—						
(a) General population.	430	1,746	307			194
(b) Richer classes.	400	1,416	254	142	226	161
2. Means of production ..	38	193	410			260
3. Raw materials of industry.	54	494	810			512

APPENDIX VII

Table showing India's share in the world trade in Tea for the three years ending 1913-14 and 1923-24.

(Vide page 129, paragraph 158, of Volume I.)

Three years ending 1913-14.

(Millions of lbs.)

—	India.	Ceylon.	China.	Java.	Total.
1911-12	263	185	195	50	693
Percentage of total	38	27	28	7	..
1912-13	282	187	198	62	729
Percentage of total	39	26	27	8	..
1913-14	292	197	191	65	745
Percentage of total	39	26	26	9	..
Average	279	190	195	59	722
Percentage of total	39	26	27	8	..

Three years ending 1923-24.

(Millions of lbs.)

—	India.	Ceylon.	China.	Java.	Total.
1921-22	317	161	57	67	602
Percentage of total	53	27	9	11	..
1922-23	295	172	76	81	624
Percentage of total	47	28	12	13	..
1923-24	345	182	107	90	724
Percentage of total	48	25	15	12	..
Average	319	172	80	79	650
Percentage of total .. .	49	27	12	12	..

APPENDIX VIII

Consumption of and rate of duty on Salt.

Chapter VII—Taxes on Consumption—Excises levied for purposes of Revenue.

(Vide paragraph 167 on pages 136-137 of Volume I.)

The following figures relate to continental India only. Burma is excluded because for a long period the rates of duty were different from those for the rest of India, while the system of levying duty did not involve an exact account of quantity. The population of and the consumption in certain Indian States and Foreign Possessions are also excluded for reasons which will appear later.

2. The principal sources of supply of salt to India are (1) the salt mines at Khewra, and other places in the North-West Frontier Province and the Punjab, (2) the salt factories at Sambhar and other places in Rajputana, (3) the factories, both monopoly and excise, in Bombay and Sind, (4) the factories, both Government and excise, along the Madras Coast, (5) the educed salt issued from saltpetre factories, (6) imports by sea, (7) imports by land from Portuguese territory.

3. In addition to these supplies salt is made for their own consumption by the States of Cutch, Baroda and Travancore and some of the Kathiawar States, and for export into British India as well as for their own consumption by the Portuguese territories in India. On the other hand the French territories and the State of Cochin receive duty-free supplies from British India, and some of the States of Rajputana likewise receive duty-free supplies under treaty arrangements.

4. The figures shown as the figures of consumption in the table below include all the salt that paid duty to the British Government in the years indicated, whether at the mines or at factories or at sea or land customs offices or at bonded warehouses. They do not represent either manufacture or import or actual consumption. They are concerned only with the quantities which actually paid duty, which in many cases represent issues on account of subsequent years.

5. The figures for the years 1878-79 to 1921-22 are taken from the Statistical Abstract. Those for 1922-23 and 1923-24 have been supplied by the Commercial Intelligence Department. As, however, figures for these years were not available in the case of Bihar and Orissa, an estimate has been made with reference to the figures for 1921-22.

6. The population over which they are distributed is the population of all India, excluding Burma, for the reasons already stated, and excluding also the States of Travancore, Cochin, Cutch, and the Kathiawar States, and the Foreign Possessions in India. Travancore and Cochin are excluded because the first partly supplies itself and is partly supplied with duty-free salt, while the second is purely supplied on the latter principle. Cutch and the Kathiawar States are excluded because they are entirely self-supplying in the matter. The Foreign Possessions are partly self-supplying and are partly supplied duty-free. The population of such of the Rajputana States as receive duty-free supplies has not been excluded, because the

figures of quantities in question are small and the figures of population cannot easily be ascertained.

Year.	Consumption of salt in India (excluding Burma) in lakhs of maunds.	Total population of India (excluding Burma), number in lakhs.	Consumption per head, lbs.	Index number of consumption per head.	Rate of duty per maund. Rs. A. P.
1878-79	260	2,297	8·9	100	* 2 8 0
1879-80	269	2,345	9·4	106	* 2 8 0
1880-81	264	2,294	9·0	101	* 2 8 0
1881-82	276	2,443	9·3	104	* 2 8 0 and 2 0 0
1882-83	292	2,471	9·7	109	2 0 0
1883-84	294	2,500	9·6	108	2 0 0
1884-85	312	2,528	10·2	115	2 0 0
1885-86	304	2,557	9·7	109	2 0 0
1886-87	322	2,586	10·2	115	2 0 0
1887-88	312	2,614	9·8	110	2 0 0 and 2 8 0
1888-89	311	2,643	9·6	108	2 8 0
1889-90	318	2,672	9·8	110	2 8 0
1890-91	319	2,761	9·7	109	2 8 0
1891-92	332	2,730	10·0	111	2 8 0
1892-93	337	2,734	10·1	113	2 8 0
1893-94	333	2,738	9·8	110	2 8 0
1894-95	334	2,742	10·0	111	2 8 0
1895-96	334	2,747	10·0	111	2 8 0
1896-97	328	2,751	9·8	110	2 8 0
1897-98	333	2,755	9·9	111	2 8 0
1898-99	339	2,760	10·1	113	2 8 0
1899-00	339	2,764	10·1	113	2 8 0
1900-01	348	2,768	10·3	116	2 8 0
1901-02	343	2,773	10·1	113	2 8 0
1902-03	351	2,791	10·3	116	2 8 0 and 2 0 0
1903-04	363	2,809	10·6	119	2 0 0
1904-05	376	2,827	10·9	122	2 0 0 and 1 8 0
1905-06	391	2,846	11·3	125	1 8 0
1906-07	409	2,864	11·7	131	1 8 0 and 1 0 0
1907-08	426	2,882	12·1	136	1 0 0
1908-09	433	2,901	12·2	137	1 0 0
1909-10	431	2,919	12·1	136	1 0 0
1910-11	432	2,937	12·1	136	1 0 0
1911-12	458	2,956	12·6	142	1 0 0
1912-13	459	2,958	12·7	143	1 0 0
1913-14	468	2,960	12·9	145	1 0 0
1914-15	494	2,962	13·7	154	1 0 0
1915-16	460	2,964	12·7	143	1 0 0 and 1 4 0
1916-17	520	2,967	14·4	162	1 4 0
1917-18	558	2,969	15·4	173	1 4 0
1918-19	480	2,971	13·3	149	1 4 0
1919-20	444	2,973	12·3	138	1 4 0
1920-21	493	2,975	13·6	153	1 4 0

A maund = 82$\frac{2}{7}$ lbs.

* The rate in Bengal during these years was Rs. 2-14-0.

Year.	Consumption of salt in India (excluding Burma) in lakhs of maunds.	Total population of India (excluding Burma) number in lakhs.	Consumption per head, lbs.	Index number of consumption per head.	Rate of duty per maund.
					RS. A. P.
1921-22	509	2,977	14·0	158	1 4 0
1922-23	567	2,979	15·6	175	1 4 0 and 2 8 0
1923-24	494	2,981	13·6	153	2 8 0 and 1 4 0

A maund = $82\frac{2}{7}$ lbs.

APPENDIX IX

Chapter VII—Taxes on Consumption - Excises levied for purposes of Revenue.

A Note on the Systems of Taxation of Tobacco in other countries and in India.

Tobacco a very common subject of taxation.

To any but persons accustomed to Indian conditions, it is hardly necessary to emphasise the fact that tobacco is, in nearly all the rest of the world, universally recognised as affording one of the most suitable subjects for taxation. As, however, it has gone to a great extent untaxed in British India for so many years, it may perhaps be useful to enforce this position by a few quotations.

Thus Mr. Armitage Smith in his 'Principles and Methods of Taxation' says:—

"The aim of taxation is revenue; by confining indirect taxes to few articles the cost of collection is diminished; the selected articles should be, however, sufficient in number, and of such a kind as to touch all classes, and to reach in a moderate degree those who do not contribute to direct taxation. The articles suitable for taxation vary with the circumstances of a country and the habits of the people; tea and coffee, beer, spirits, and tobacco are very suitable commodities in Great Britain, while a salt tax is almost the only form of taxation which can touch the masses in India."

Mr. Hobson in his 'Taxation in the New State' states as follows:—

"The only important indirect taxes which an intelligent State would retain are those directed to the control and restraint of a few important articles of popular luxury, the large consumption of which is not merely a presumption of the possession of superfluous income, but is definitely detrimental to personal health, morals or public order. Of this character are alcoholic drinks and tobacco, in the dimensions of their present use."

Carl Plehn in his 'Introduction to Public Finance' says:—

"Luxuries and comforts may be taxed heavily. This applies especially to luxuries the use of which has become a fixed habit with large masses of people. The general principle is to select those luxuries of the widest consumption as the objects of the heaviest taxes. Thus, alcoholic liquors and tobacco are universally taxed in this way. In the United States they form almost the sole objects."

And affords a large share of the revenue in many countries.

As a consequence the taxation of tobacco holds a high place in the revenue administration of many countries. The following table illustrates the proportion borne by taxation of tobacco to total tax revenues in the countries for which figures are readily available. It will be observed, however, that in certain cases even these proportions are due to the inland revenue only, owing to the customs duties being merged with those on other articles—

Country, year and currency (1)	Yield from taxes on tobacco in millions. (2)	Total tax revenue in millions. (3)	Percentage borne by column (2) to column (3). (4)
Great Britain—1922-23—pounds	53	911	[illegible]
Commonwealth of Australia—1918-19—pounds.	2	45	4·4
New Zealand—pounds	1	22	4·5
Canada—1919-20—dollars	31 *	350	8·9
United States of America—1920—dollars ..	296 *	6,704	4·4
Argentina—1920—dollars	43	460	9·3
Chile—1921—paper dollars	18	190	9·5
Germany—1921-22 - marks	3,500	95,000	3·7
Belgium—1921—francs	70	3,119	2·2
Holland—1922—florins	18	607	·3

* In these two cases the figures are for inland revenue only.

The systems adopted may be divided into four groups.

The systems adopted in these and other countries of administering the tax may be considered roughly in four groups—

(1) The English system,

(2) the stamp system,

(3) the system of manufacture in bond, and

(4) the system of monopoly.

It will be observed that these systems are not of necessity mutually exclusive.

The English system.

The English system is based on the fact that England is a large manufacturing country, growing very little indigenous tobacco. For instance, in 1922 the imports of manufactured tobacco were only 688,000 lbs., while the import of unmanufactured tobacco was over 135 million lbs. Tobacco may only be imported through certain ports where warehousing facilities are provided, in ships of a fixed minimum tonnage and in packages of a prescribed minimum size, which must contain nothing but tobacco.

The quantity of tobacco grown is insignificant, but there are rules providing for the supervision of growing and of curing from the time of plucking the crop until it is delivered to the warehouse.

Duty is paid on the unmanufactured article when it leaves the bonded warehouse for the factory, but special facilities are given for rebates on losses in the process of manufacture, and for this purpose excise officers are employed whose principal duties are to see—

(1) that no tobacco is used in the factory which has not paid duty, and

(2) that nothing except certain prescribed materials is added to the tobacco during the course of manufacture. The main purpose of this regulation is to prevent increase of the weight, on which the rebate of duty depends.

Every manufacturer is required to take out a license, for which he pays a sum which depends on the weight of unmanufactured tobacco received by him within the preceding year. Sample rates of fees are—£5 5*s* for a weight not exceeding 20,000 lbs., £10 10*s* for one between 40,000 and 60,000 lbs., and £31 10*s* for one exceeding 100,000 lbs. In applying for the license the manufacturer must describe all premises which he proposes to use for the purpose of his trade. Raw tobacco is brought to the factory under a permit showing that duty has been paid when it was released from the bonded warehouse. All tobacco entering the factory is entered in a tobacco entry book and the permits are filed with the book. During the course of manufacture the manufacturer is not allowed to add any substance other than water and essential oil, except in the case of Cavendish tobacco and roll tobacco. If any manufacturer is found to have in his possession tobacco which has completed the final stage of manufacture and contains more than 32 per cent of moisture or 4 per cent of oil, he incurs a penalty. It is also an offence to use in the manufacture of tobacco the leaf of any plant other than the tobacco plant. The Excise Officers take samples of the finished articles and send them for analysis. There are two kinds of samples: general samples, which are intended as a check on the manufacturer's operations, and special samples, which are taken when an offence is suspected and it is thought that a prosecution may be necessary.

During the process of manufacture considerable quantities of refuse are accumulated, consisting of stalks, tobacco dust, sand and "smalls" (tobacco which has been broken into pieces too small for use). These are returned to the bonded warehouses and drawback of duty is given for them.

The rates of duty are 8*s* 2*d* per lb. for unstemmed tobacco and 8*s* 2½*d* for stemmed.

Every retail dealer is required to take out a license, for which the annual charge is 5*s* 3*d*. Retailers are subject to inspection, and inspections are sometimes made, chiefly as an additional check upon the manufacturers.

The stamp system—General.

The stamp system is in force in the United States of America, Canada, Mexico, Chile, Argentina, Brazil, Belgium, Holland, Germany, Finland, Norway and Denmark. Under this system the duty is paid by means of revenue stamps affixed to the packages in which the tobacco is made up for retail sale. The stamp system is the most common of all systems of

tobacco taxation, and in a considerable number of countries it has been adopted within the last few years. The common features of different types of the system are—

(a) a legally prescribed series of packages, whether by weight and number or by value,

(b) a requirement that there shall be affixed to each package a mark of identification of the manufacturer, together with a description of the contents and the weight and price,

(c) a revenue stamp affixed to each package by the manufacturer or importer,

(d) the licensing or registration of persons, establishments, machines, etc., used in the trade, and

(e) periodical inspection of books and stock-taking by revenue officials.

As applied in the United States of America.

A detailed description of the system in the United States of America will serve to indicate the administrative features of a typical system.

Growers of tobacco are under no kind of restriction in the United States. They need keep no books nor make any report of the quantity grown, and they may sell their crop to any person they choose.

Dealers in tobacco leaf are under strict regulation. They must be registered with the district collector of taxes and enter into bonds. They may only sell to other dealers or manufacturers, or for export. They must keep full records of all their business and submit returns to the revenue authorities, supported by invoices. They must also furnish inventories once a year and are liable for a tax equivalent to that on manufactured articles in respect of any leaf tobacco removed otherwise than in the prescribed manner, or omitted from their books.

There are two classes of manufacturers, those of smoking tobacco and those of cigars and cigarettes. All manufacturers must be registered, must make sworn statements giving details of their premises and machinery, enter into bonds, submit annual inventories of materials of every description that are in their possession, keep prescribed books showing daily the receipts, manufacture, issues, etc., of all goods, and must also submit monthly abstracts of all transactions.

These requirements are common to both classes of manufacturers. In addition manufacturers of tobacco are required to put up their tobacco in packages of standard weight. These weights range from ⅛ oz., to ¼ and ⅜ oz., and so on by addition of ⅛ oz. to 2 oz., thence by addition of ¼ oz. to 4 oz., thence to 5, 6, 7, 8, 10, 12, 14 and 16 oz. The packing materials used must be approved by the revenue authorities, and each package must have a label bearing the manufacturer's identification number and warning the public against using the package for tobacco again.

The tax is paid by means of stamps, which the manufacturer is required to affix to the packages, indicating the weight of tobacco and the class of goods contained in each. These stamps are cancelled either by overprinting the name of the manufacturer and the date or by perforation. The rate of tax on manufactured tobacco is 18 cents per lb.

Cigars and cigarettes are required to be put up in packages of prescribed contents bearing a statement of the number of articles therein and the manufacturer's identification number and the revenue stamp. There are regulations prescribing the number of cigars and cigarettes which may be placed in one package. The tax is paid in the same manner as for tobacco, but in addition the stamp must denote the tax payable. As a basis for taxing stock deficiencies there is a legal presumption that 25 lbs. of leaf tobacco yield 1,000 cigars. The rates of tax per 1,000 cigars are as follows:—

	DOLLARS.
Not exceeding 3 lbs. in weight	1½
Exceeding 3 lbs. per 1,000	
if the retail price does not exceed 5 cents	4
if it is more than 5 and not more than 8 cents	6
if it is more than 8 and not more than 15 cents	9
if it is more than 15 and not more than 20 cents	12
if it exceeds 20 cents	15

Cigarettes not exceeding 3 lbs. in weight per 1,000 pay 3 dollars, if they exceed that weight, 7 dollars and 20 cents.

There are four classes of stamps, viz., those for tobacco, snuff, cigars and cigarettes. They are stocked by collectors of taxes and sold only to manufacturers, or to importers of manufactured goods who are certified as such by the customs authorities.

All sales must be in stamped packages, and the absence of stamps renders the goods forfeit. The purchaser is required to destroy the stamp on the stamped receptacle when it is emptied.

The system of manufacture in bond—General.

The chief features of the bond system, which is found in Australia and other parts of the British Empire, are—

(1) registration of producers of and dealers in raw tobacco,

(2) control of cultivation and compulsory returns from dealers of tobacco purchased and sold,

(3) licensing of manufacturers,

(4) manufacture in bond,

(5) payment of duty on issues from the factory or bonded warehouse, and

(6) absence of special control as regards retail sales.

As applied in Australia.

The following is a more detailed account of the system in Australia, which is typical.

Producers of tobacco are required to be registered and to keep books showing the area planted and the quantity harvested, cured and sold. A return is required to be forwarded to the collector of taxes every year.

Dealers in raw materials must also be registered and must keep books showing purchases and sales, distinguishing home grown from imported tobacco. They submit quarterly returns to the collector of taxes.

Apart from these requirements to keep books and to furnish information to the collector of taxes, neither farmers nor dealers appear to be under any restrictions in the matter of their trade.

Manufacture takes place in bond, and a license duty varying from £5 to £250 must be paid. The factory must be secured to the satisfaction of the collector of taxes and all particulars regarding it must be set forth. The manufacturer is required to keep books showing the receipt of tobacco and other dutiable goods (home and imported tobacco being shown separately), the quantity manufactured and removed, the amount of refuse, and the amount of duty paid. He must also keep a delivery book showing the date, weight and consignee for each delivery of tobacco.

There are also regulations prescribing the manner in which manufactured tobacco may be put up in packages and marked. Uncut tobacco may not be sent out in quantities of less than 5 lbs. Cut tobacco must be made up in quantities of 1 oz. or more and put up in outer packages of 5 lbs. net or more. There are also restrictions on the minimum quantity of cigars and cigarettes in each package. All packages are required to be marked with their weight.

Dutiable articles required for manufacture are allowed to the factory duty free.

Another feature of the system is the "computed yield". All leaf tobacco is deemed to have been made into the highest quality articles unless the manufacturer shows the contrary. The "computed yield" of 100 lbs. of leaf tobacco is 110 lbs. of plug tobacco, 106 lbs. of cut tobacco, 90 lbs. of cigars or 104 lbs. of cigarettes.

Manufacturers are not allowed to have in their factories manufactured tobacco containing more than 30 per cent of moisture. Provision exists for dealing with the refuse arising in the manufacture of tobacco, but refuse from imported tobacco must be kept distinct from that of home grown tobacco.

Duty is paid on issue from the factory or bonded warehouse. The rates of duty per pound are as follows:—

	s.	d.
Hand-made tobacco	2	1
Manufactured tobacco	2	4
Cigarette tobacco	7	0
Cigars—hand-made	2	8
—machine-made	3	8
Cigarettes—hand-made	7	0
—machine-made	7	3

No special control is exercised at the stage of retail sale.

The countries that employ monopoly systems.

The following is a list of the principal countries in which tobacco is a State monopoly:—

France, Italy, Sweden, Portugal, Czecho-slovakia, Austria, Hungary, Poland, Bulgaria, Roumania, Greece, Spain and Japan.

Other countries that have considered them.

The institution of a tobacco monopoly has also been considered in several other countries such as Germany, Switzerland, Australia and Denmark. Proposals for a State tobacco monopoly were submitted to the Reichstag in 1882 by Prince Bismarck, but they were rejected by a large majority although the monopoly was expected to return an increased revenue of over £5½ millions, without any addition to the retail prices at which tobacco was sold.

The possibility of establishing a tobacco monopoly was also considered by the first Committee of Experts who examined the question of the reparations to be paid by Germany. They considered that a tobacco monopoly would entail very heavy initial expenditure and recommended with certain modifications a scheme suggested by two eminent experts M. Mayer and Signor Aliprandi. The main features of the scheme suggested by these two experts were as follows:—*

(1) No factory, or wholesale or retail tobacco shop was to be established without the permission of the State.

(2) The introduction of tobacco substitutes in manufacture was to be prohibited.

(3) The number of existing factories was to be reduced by abolishing, with a fair indemnity, those which were not industrial in character, while all factories which had been proved by experience to be incapable of producing goods at a fair cost price were to be expropriated.

(4) Products manufactured in the various factories were still to be sold with their trade mark, but the sale price to the consumer was to be indicated on each package; each box or packet was to be sealed with a band representing the State guarantees.

(5) The existing manufacturers were to group themselves into associations according to the categories of goods produced and the associations were to undertake to supply the State with the quantities required for consumption.

(6) The products manufactured were to be bought by the State at prices to be fixed at regular intervals.

(7) The prices were to be fixed in conformity with the results obtained in one or two State factories, to be run for experimental purposes and for the control of prices.

(8) Importers of foreign manufactured products were to be free to continue their business on the sole condition that they sold their imported products to the State warehouses, under the same conditions of delivery as home manufacturers who delivered the goods produced in their factories.

(9) As regards sales, the State was to use the wholesale dealers' warehouses for its own purposes, and retail sales were to be carried out exclusively by licensed dealers. The retail dealers were to sell only State products bearing the proper guarantee band, at the price fixed on the package and their remuneration was to be fixed at regular intervals at a definite rate

*See pages 50-51 of the Report of the First Committee of Experts on Reparations.

not exceeding 12 per cent on the sale price to the consumer. A small number of State retail shops were to be instituted in order to obtain reliable estimates and to control the expenses of sale.

The Committee of Experts, while accepting the scheme in general, suggested that it would be preferable to entrust the sale to an entirely autonomous organization, the constitution of which might be based on the example of the Swedish monopoly.

The question was raised in Switzerland in 1899 and again in 1912, but the proposal was very unpopular and no monopoly has yet been established. In Australia a Select Committee of the Senate in 1904 and 1905 and a Royal Commission of five members in 1906 considered exhaustively the question of a Government monopoly of tobacco. Although the majority of the Commission declared in favour of nationalisation of the tobacco industry, the Report has not been followed by any political or Parliamentary action. The institution of a monopoly has also been considered in Denmark recently, but postponed for financial reasons.

Monopolies are of two kinds.

A tobacco monopoly may be administered in two ways:—

(1) The Government may directly take responsibility for the management through a duly constituted State department, as in France, Italy, Austria, Japan, Roumania and Servia, or

(2) it may allow a private or quasi-official company to manage the concern on behalf of the Government, as in Spain, Turkey, Portugal and Sweden.

The French system is a type of a complete Government monopoly.

The French system furnishes the best example of the first type.*

A tobacco tax was first imposed in France in the year 1629 in the form of an import duty. In 1674 a Royal monopoly of the manufacture and sale of tobacco was created and farmed out. The revenue from this monopoly rose from half a million francs in the first year to 32 millions at the time of the Revolution. In 1791 the monopoly was suppressed and a new system was introduced under which cultivation, manufacture and sale were free, but there was a special tax on manufacturers and sellers, with an import duty on tobacco leaf and a prohibition of the importation of manufactured tobacco. In spite of an increase in the duties, there was a fall in revenue, and in the year 1810 a monopoly was constituted for the purchase of tobacco leaf and the manufacture and sale of tobacco. Since 1865 there has been a special department to manage the tobacco monopoly.

The chief features of the system are as follows:—

(1) Concentration of cultivation by restricting it to certain districts and by the imposition of a minimum limit of area.

(2) Detailed supervision of cultivation.

(3) Prohibition of the sale of foreign cigars and cigarettes in France except through the monopoly and under certain conditions.

(4) The limitation of import on private account to 10 kilogrammes per annum for each person. The imported article is of course subject to a very heavy customs duty.

(5) The stamping of the packets manufactured by the State as under the stamp system.

(6) Retail vend through selected persons.

Cultivation is allowed in only 29 *departements*, the localities being selected by custom and climate. The regulations which govern it are very strict. The cultivator is required to put in a formal application to grow tobacco. These applications are scrutinised by a Commission presided over by the *Prefet* or his delegate. Permits to cultivate are given only in respect of land of an area of not less than 10 *ares*. The Commission usually reject applications from persons who have not proved their solvency or

*For a detailed description of the French system of tobacco monopoly see Madsen's 'The State as Manufacturer and Trader' (Fisher Unwin), and J. Caillaux 'Les Impôts en France'.

whose land is not favourable to the production of good tobacco or who have not been able to obtain for their crop in previous years an average price of at least 10 to 20 per cent less than the average for the district.

The operations of the tobacco planters are controlled by the cultivation officials, who pay frequent surprise visits to ensure the observance of the prescribed regulations. They supervise the transplanting operations, the topping, lopping and removal of the buds and also the drying operations. The area under cultivation is carefully measured and the total number of plants is estimated by counting the number in a few typical squares. Similarly the total number of leaves is calculated by multiplying the number of plants by the number of leaves left on each plant on an average. The cultivator is allowed a small number of plants for his personal use.

The next process is that of the delivery of the crop, which is also regulated by a Prefectoral decree. The receipt and classification of the crop are performed by a commission of experts composed of two agents of the administration of the State factories and three experts appointed by the *Prefet*. The commission of experts take samples and classify the leaves brought in by the planters. The tobacco is then taken to the warehouse, where it is graded according to quality and purchased at a price fixed by a committee on which the cultivator as well as the Government are represented.

The area under cultivation has decreased enormously during recent years owing to the fact that the fixed prices offered by the administration are no longer profitable in comparison with other crops. In order to make up for the deficit in the home crop it has been necessary to resort to importation on a large scale from Algeria, America, India and elsewhere. The Government maintain altogether 31 depots for raw materials, 5 of which are for imported tobacco.

From the bonded warehouses the tobacco goes to the factories, of which there are 23. Operations there are conducted within a high wall and the operatives are searched on leaving. No account is kept of the relation of outturn to raw material, but reliance is placed on the fact that the operatives all have a pension to look to. The tobacco is damped, cut up into pipe tobacco and made into cigars and cigarettes of two qualities. The packets are sealed with stamps similar to those used on excisable articles.

For the distribution of the products there are 366 entrepots. The right of retail vend is a privilege granted to persons who have deserved well of the State, the income from the monopoly value of the shop being regarded as a substitute for or an addition to a State pension. There are four classes of vendors—

(1) retired higher grade officers or their widows or orphans,

(2) retired lower civil service officials or their widows or orphans,

(3) invalided soldiers, and

(4) persons who have done any proved act of bravery or self-sacrifice in the interests of the community.

The appointment is made by the Minister of Finance when the annual income exceeds 1,000 francs and by the local *Prefets* when it is less. The holders are allowed to sublet. They are required to sell at a uniform fixed price and are allowed to purchase at a discount of 8 per cent.

It may be of interest to note that an American company recently offered a large sum for a private monopoly, but it is understood that the vested rights of the functionaries prevented the offer being accepted. The following figures regarding the cost of the monopoly and its financial results may be of interest, though they relate to 1913:—

	FRANCS.
Gross receipts	545,074,039
Working expenses	115,193,035
	429,881,004

Details of Expenses.

	Francs.
Cultivation	1,395,026
Purchase of materials	67,175,559
Depots for leaf	2,234,186
Manufacture	37,775,999
Entrepots	1,334,486
Transport	3,874,276
Miscellaneous	1,403,503
	115,193,035

The quantity sold in 1913 was 44,056,607 kilos, and the price worked out at 12.3 francs per kilo.

The system in Japan.*

A tax on tobacco was first introduced in Japan in 1876 in the shape of a license fee on manufacturers and wholesale and retail dealers coupled with a tax on manufactured goods at the rate of 20 per cent on the retail selling prices. In 1896, owing to the financial difficulties arising out of the Chinese war, the Government found it necessary to discover new sources of revenue, and it was decided to establish a State monopoly in the purchase and resale of indigenous tobacco leaf. The monopoly law did not at first apply to foreign leaf, but it was extended to it in the year 1899. A complete State monopoly over purchase, manufacture and sale was established in April 1904 after the Russo-Japanese war. Reasonable compensation was paid to the private manufacturers of and dealers in tobacco.

Cultivation.—The cultivation of tobacco had been scattered irregularly over the country when it was free, but with the establishment of the leaf monopoly the State found it necessary to impose a number of restrictions on cultivated areas for administrative purposes. The cultivators are now required to obtain special licenses and are subject to strict rules and regulations. Within three years of the introduction of the leaf monopoly the number of villages in which tobacco was grown was reduced from 6,100 to 2,000 and the area devoted to cultivation from 103,000 acres to 98,000 acres. The number of villages cultivating tobacco was only 1,226 in 1910, the total area being 73,000 acres. Restrictions have also been imposed on the types of leaf which may be grown by the cultivators, and the number of types has been reduced considerably. These restrictions on tobacco growing, which have been found necessary for administrative purposes, have resulted in a decline in the Japanese export trade in leaf tobacco. The largest quantity exported before the institution of the monopoly was 2.48 million lbs. This had fallen by 1913 to .47 million pounds.

Manufacture.—The manufacture of cigarettes was commenced in 1904 and that of cut tobacco in the following year. The Government took over many of the private establishments and in the earlier years made provisional arrangements with a number of firms for manufacture under contract pending the construction of new Government factories. The State factories manufactured cigarettes and cigars out of imported leaf also.

Distribution and sale.—For the distribution and sale of manufactured tobacco the State has established a large number of selling offices scattered throughout the country. Wholesalers and retailers are specially appointed by the Government under a license for a limited period. The retail price is fixed and published by the Government, and in no case is any tobacco allowed to be sold to consumers at a price other than the price fixed. Wholesalers buy from selling offices at these prices less a fixed discount of 15 per cent for most goods, and on selling to the retailers add their profit, which must be within 3 per cent of the retail price. The retailers consequently receive a profit of about 12 per cent on the total sales.

Export of manufactured tobacco has also considerably declined since the establishment of the State monopoly. The average value of the exports, which during the period 1902 to 1905 was £274,000, had declined to £58,000 in 1913.

*See Madsen's 'The State as Manufacturer and Trader'.

The Swedish system is a type of a monopoly administered by a *compagnie mixte*.

The Swedish monopoly may be taken as a type of one operated by a private company on behalf of the State. This monopoly came first into operation on 1st June 1915. Under a law passed in the previous year, the importation of raw material and the manufacture of tobacco products became an exclusively State privilege conceded to a tax-paying monopoly company specially formed for the purpose; and compensation was given to private manufacturers who were thereby deprived of their livelihood. The monopoly, however, is not complete, since foreign products may still be imported by private dealers and the cultivation and sale of tobacco remain free, subject to certain regulations required in the interests of the revenue.

The capital of the company was, under the agreement of 1914, distributed in 1915 as follows:—

	£ Millions.
Ordinary shares owned by the State	1·13
Preference shares owned by the State	·67
Preference shares subscribed by the public	·28
Debentures borrowed by the company	1·20
Total ..	3·28

The contract between the State and the company was to last for ten years. The distribution of the profit was to be such that preference shares took 6 per cent cumulative, ordinary shares then took up to 6 per cent and what remained was divided in the ratio of one-eighth to preference and seven-eighths to ordinary shares until the preference dividend reached 7 per cent. Any further profit went in the ratio of one-tenth to preference and nine-tenths to ordinary shares. The company made a net profit of 11.2 million krone in 1919 and 11.9 in 1920, and paid dividends at the rate of 9 per cent on preference shares and 31 per cent on ordinary shares.

The policy followed has been to concentrate the manufacture in a few large factories, and the trade now employs more men than it did before the monopoly was instituted. The affairs of the company are administered by a board of directors of six or eight members, half of whom are appointed by the Crown and the other half elected by the preference shareholders.

The retail prices of the monopoly goods are fixed at the discretion of the company and there is no direct State control. The company is the sole importer of raw tobacco into Sweden, but it is required to pay customs duty on a scale specially set up in connection with the monopoly. It pays inland revenue taxes equivalent to a fixed percentage of the retail price on all goods sold. In the case of the independent dealers who import and sell tobacco products, a license duty is levied through the agency of the company, which includes, not only the inland revenue taxes, but also an extra payment to the company corresponding to what would require to be included as cost and profit in the price of such goods if they were sold by the company itself. The company is allowed to decide the amount of the inclusive license duty subject to appeal by the importer to the Crown, if he considers the charge excessive. This provision is intended to protect the company against competition.

The scheme of 1915 is understood to have been a great success both from the industrial and from the fiscal point of view.

Taxation of tobacco in India is more common than is sometimes realized.

The absence of any taxation of tobacco in British India (except through the customs and the octroi) has somewhat tended to obscure the fact that other taxing authorities in India have long been deriving a revenue from this article. The information available to the Committee on the subject is not complete, but they have evidence that tobacco is taxed throughout the French and Portuguese possessions and in at least 72 of the Indian States.

The various methods of taxation adopted.

The methods adopted are by no means so complete as those in the countries that have been considered, but they have several points of interest, and in a few instances yield quite a considerable revenue. The systems

*Most of the information regarding Sweden is taken from Madsen's 'The State as Manufacturer and Trader.'

adopted (excluding the octroi) may be divided into taxes on cultivation, excise duties on local production, local customs duties, both on import and export, fees for vend, and monopolies.

The principal taxes on cultivation of which the Committee have information are charges of Rs. 3-2-0 per bigha in Dholpur and Re. 1 in Nabha, the latter being coupled with an import duty.

Taxes of the nature of local excises are a levy in kind of one-eighth of the production in Deodar and one-sixth in Tharad, while Nawanagar levies an excise varying from Rs. 10-4-0 to Rs. 20-8-0 for different kinds, as part of a general scheme which is described more fully below.

Local customs duties are the most common method of taxation. Import duties are levied in 42 States and vary from 2 annas a maund in some of the smallest States to Rs. 41 in Travancore, while the rate in Portuguese India is Rs. 38-10-0. Export duties are levied varying from 4 annas to Rs. 2-8-0 a maund, and occur only in 14 States, generally as part of a more general scheme of taxation.

Fees for vend are sometimes fixed sums and sometimes determined by auction. The highest fixed fee in the Indian States is Rs. 25 in Jhind. In Portuguese India the charge is Rs. 76-4-0 for a wholesale license, Rs. 38-3-0 for a license to an itinerating vendor and Rs. 23-2-0 for a license to a retail shop.

Monopolies are found in Bilaspur, Koti, Mewar, Sikkim, Suket, Tehri Garhwal, and Nawanagar. The last is the most important and is described below.

Some examples of the more important systems.

The following is a more detailed account of the systems in some of the more important cases.

Travancore.

Until 1853 there was a Government monopoly of tobacco in the British districts on the West Coast and also in the adjoining Indian States of Travancore and Cochin. In Travancore under the monopoly system the State made direct purchases of tobacco of various kinds, which were brought into the country by certain specified routes, and stored in large warehouses. The tobacco was then distributed to centres where it was sold at monopoly rates to private dealers.

After the abolition of the State monopoly in the British districts, it was found exceedingly difficult to suppress illicit traffic in tobacco and a large revenue was lost owing to smuggling. Consequently in 1862 the monopoly was abolished and an import duty on tobacco substituted. Cultivation of tobacco is now prohibited and the bulk of the revenue is derived from the import duties. The import of unmanufactured tobacco is permitted only by certain specified routes. The kinds of tobacco that may be imported by each route and the minimum quantity that may be so imported are prescribed by rule. All persons who import tobacco are required to take out licenses for import into, possession and sale in the State. The duty is paid at the time of import, but merchants who import large quantities are allowed to stock the tobacco in bonded warehouses and to pay the duty on removal.

The rates of duty, which vary according to the quality, are as follows:—

Jaffna tobacco	Rs. 110 per candy.*
Coimbatore and Tinnevelly tobacco	Rs. 100 per candy.*

All dealers, wholesale and retail, are licensed. As a check on smuggling, no unlicensed person is allowed to possess more than half a pound of tobacco within half a mile of the frontier or more than 5 lbs. in any other part of one of the frontier taluks.

*A candy is equal to 600 lbs.

The following are the figures of consumption and of revenue for the years 1920-21 to 1923-24:—

Year. (1)	Total consumption. (2)	Consumption per head of the adult population. (3)	Total revenue. (4)
	CANDIES.	LBS.	RS.
1920-21	18,090	4·05	17,00,298
1921-22	17,699	3·98	18,73,576
1922-23	19 110	4·29	20,26 843
1923-24	17,759	3·98	18,80,378

Cochin.

In Cochin the cultivation of tobacco is prohibited. Imports in excess of one pound of smoking tobacco and five tolas of chewing tobacco are prohibited, except under permit, and a license is required for sale and for possession for the purpose of sale. The shops are of two kinds, both being sold by auction. Class A shops may import and sell wholesale only. There are two or three in each taluk. Class B shops may only buy from Class A shops and may sell by retail. There are about 900 Class B shops. Tobaccos made up in the European fashion are excepted.

The following are the figures of the rentals for the last five Malabar years:—

	RS.
1095 (1919-20)	1,84,171
1096 (1920-21)	2 43 295
1097 (1921-22)	2,55,718
1098 (1922-23)	2,55,718
1099 (1923-24)	2,59,785

Patiala.

The Patiala State is divided into contract areas for the purposes of tobacco taxation and the sole right of purchase and vend in each area is sold by auction to contractors. There are about 200 licensees. No one except a licensee may sell tobacco and no one but a licensee or a cultivator may possess more than two seers.

Cultivation is free, but the Revenue staff watch the area cultivated by each cultivator. The cultivator is allowed a fixed quantity for family consumption, but he must sell the balance within six months of gathering the crop. Contractors may buy from cultivators or import. They are required to pay customs duty on import into the State and octroi on import into a town.

The monopoly does not extend to the sale of cigars and cigarettes, for which separate licenses are sold at fixed fees or by auction if a large return is expected.

The yield is about 2 lakhs of rupees a year.

Nawanagar.

Tobacco is taxed in three ways in Nawanagar—

(1) by means of an import duty,

(2) by an excise on local produce, and

(3) by auctioning the monopoly of retail vend.

The rates of duty on imported and local produce are as follows:—

	RS.	
(a) On unsliced tobacco of all sorts and leaves for use in making *bidis*	10	per maund (40 pounds).
(b) On sliced tobacco with leaf stalks	14	Do.
(c) On cleansed, sifted and sliced tobacco	16	Do.
(d) On *bidis*	1	per thousand.

	RS.	A.	
(e) On scented tobacco, used for chewing with betel leaves, and Pali snuff	0	8	per pound (40 tolas).
(f) On country made cigarettes	50		per cent.

Local produce—

(g) On unsliced tobacco leaves packed in bundles, if for home consumption	10	0	per maund.
(h) Do if exported	0	4	do.
(i) On Deshan (hookah) tobacco for home consumption.	5	0	do.
(j) Do. if exported	0	4	do.
(k) On leaves used for preparing *bidis*	10	0	do.

The privilege of vend, subject to payment of the prescribed rates of duty, is sold as a monopoly for a single contractor. The total revenue of the State from the taxation of tobacco is about Rs. 1,30,000 per year.

Mewar.

In Mewar a revenue of about Rs. 60,000 is derived, mainly from import duties, which are levied at the rate of 12½ per cent *ad valorem*. There is also an export duty, and a small revenue is derived from the sale by auction of the right to vend tobacco in Mewar town and from fixed license fees for village shops.

French India.

Some years before 1918, a system of monopoly of vend was introduced in French India, replacing a more elaborate system. Shops are sold by auction, no definite area being allotted, but they are so distributed as to give each a practical monopoly of its area. Tobacco for European consumption does not come within the scope of the system. Cultivation, manufacture and possession are not restricted, but sale without a license is an offence, and the licensees do most of the detection. The revenue is understood to have been Rs. 60,000 in 1920 and Rs. 48,000 in 1923.

The early history of the taxation of tobacco in British India.

The information available as to the earlier taxation of tobacco in British India is very meagre, but it is sufficient to show that there was much less hesitation in the matter of imposing taxation upon this article than has been shown in later years.

In pre-British times there can be little doubt that it was one of the principal articles assessed to transit duties.

In Bengal.

In Bengal in 1765 it was made, with betel-nut and salt, the subject of a monopoly granted to an exclusive company which paid to the East India Company a duty equal to 25 per cent of the prime cost. This company was, however, abolished by the Court of Directors in 1767.

In Madras. The West Coast monopoly.

In Madras, regulations were passed for the taxation of tobacco in 1811 and 1820. The former established a State monopoly of country tobacco in the districts of Coimbatore, Malabar and South Kanara, and is of considerable importance. Cultivation was prohibited except under license. Licenses were not given except for areas which would yield 10 maunds or more at the average rate of cultivation. The tobacco grown was purchased by Government at a rate fixed with reference to the average cost of imported tobacco. Sales were permitted only at fixed places and at prices settled by Government. There were elaborate rules dealing with the regulation of transport and the prevention of illicit cultivation, import or sale. The average annual yield of the monopoly is given in the Report of the Famine Commission 1880 as follows:—

	£
1820 to 1830	72,806
1830 to 1840	72,908
1840 to 1850	87,572
1850 to 1858	78,800

No further records are traceable, nor is any information available as to the circumstances in which the monopoly came to an end. It is significant that the corresponding taxation in the States of Travancore and Cochin has continued to give a good return up to date.

In Madras Town.

Meanwhile a tax on tobacco had been in existence for a long time in the City of Madras. There was apparently considerable smuggling in the earlier days and under Regulation III of 1820 severe restrictions had to be imposed on cultivation and sale at any place within 20 miles of the city area. Information is not readily available as to the nature of the tax or the reason for its abolition, but it is believed that one reason was the difficulty of coping with the smuggling that took place.

In Bombay.

Meanwhile again, a similar tax was introduced in the City and Island of Bombay. The earlier regulations governing this tax have not been traced, but Act IV of 1857, by which they were amended, is still in force. Under this law a staff under the control of the Commissioner of Excise watches the entrances to the Island and takes steps to ensure that tobacco which has not paid duty on importation is placed in a warehouse under the Commissioner's control. Issues from the warehouse are only allowed on payment of a duty, which has been fixed ever since 1857 at Rs. 7-8-0 per maund. Retail sale is permitted only by licensed persons who pay a fee of Re. 1 each for their licenses. The net proceeds of the tax are made over to the Corporation. The following is a table of the return for a series of years:—*

	RS.
1921-22	3,78,000
1922-23	3,81,000
1923-24	3,85,100
1924-25	4,85,000

Some criticisms of the present administration.

It may be appropriate here to mention certain criticisms that suggest themselves of this form of taxation. In the first place it seems somewhat anomalous, that, when the proceeds of the tax are made over to the Corporation, which has its own staff for the collection of town duties, a separate staff should be employed alongside them under control of a Government officer for the collection of a tax which is to all intents and purposes a town duty. In the second place, in view of the changes in prices since 1857, it would seem desirable to consider whether the time has not come when an increase in the duty could reasonably be imposed. In the third place, and especially in view of the low rate of direct duty and the allegations of chicanery that are made, it would seem to be desirable to consider the question either of increasing the rate of license fee or of disposing of the licenses by auction.

In Northern India.

In Northern India the transit duties tended to develop into an octroi, and tobacco is taxed in many towns through this means. In some places the octroi taxation has been supplemented by a prohibition of cultivation within town limits or by a local tax on such cultivation of the nature of an excise.

Further Proposals for taxation—Mr. James Wilson.

It may perhaps be convenient to follow this account of taxes which were imposed for the most part prior to the Mutiny, with a note on the proposals relating to such taxation made since that date. The Right Hon'ble James Wilson put a tax of this nature in the forefront of the proposals made by him in his budget speech in February 1860, when he said:—

"The only other tax that we propose is a duty on home-grown tobacco, to an amount as nearly corresponding with the import duty as possible. I am aware there has been much discussion in respect to this duty: I am aware that opinion is not altogether unanimous upon the subject, but it is very nearly so: and the objections of those who have opposed it have been confined chiefly, I think, to the difficulty of levying it. Sir, when a Minister in England complains of the difficulty of a task, he is not unfrequently told that he occupies his high office for the purpose of overcoming difficulties—let us accept the same obligation. I hope within a short time, when my hands are less full, to offer a measure to this Council, which it will approve for this purpose. But here, again, I must offer

*The figures for the first two years were supplied by the Local Government: the figure for 1923-24 was taken from the Municipal Administration Report of Bombay for the year: and that for the last year was taken from the evidence of Mr. Ghosal, Commissioner of Excise, Bombay.

an observation with reference to the pretensions set up by the perpetual settlement landholders. It is said on their behalf that you cannot tax tobacco in its cultivation, because that would indirectly be increasing the rent of land. Sir, whether this is the best mode of levying the duty, I do not stop now to enquire, but at least *I cannot accept this argument* against it. What would be said in England if a farmer who cultivates Crown lands at a fixed rent for thirty years—and if the argument is good at all, it would equally apply in this case—were to seek exemption from the tax on barley malted, because it indirectly raised his rent? Sir, I entirely agree with the able minutes of the distinguished Lieutenant-Governor of Bengal (Sir J. P. Grant) upon this subject as to the matter of right, and I hope that now and for ever all these pretensions on behalf of that fortunate class will be put to rest."

In June 1860 clauses were inserted in the License Bill, which was then pending before the Legislative Council, requiring all dealers in tobacco to take out licenses in the manner directed in the schedule annexed to the Bill. No definite scheme, however, was prepared, nor did the provisions of the Bill show how the license fees were to be imposed.

Sir J. P. Grant.

These proposals were ultimately abandoned by the Government of India, mainly on the ground that, owing to administrative difficulties, no large amount could be realised from this source by any scheme of imperial taxation. Tobacco, however, was named by them as one of the sources from which considerable revenue might be derived by Local Governments, if they were left to carry out their own systems. Thereafter a Bill for the imposition of a tax at Rs. 10 per *bigha* on the cultivation of tobacco in the districts subordinate to the Government of Bengal was introduced in Bengal, but the Bill was not proceeded with after the departure of the Lieutenant-Governor, Sir J. P. Grant, who was the strongest supporter of the tax.

Later proposals.

The question of the taxation of tobacco has been repeatedly discussed since then, more particularly in 1880, by the Indian Currency Committee in 1893 and by the Government of India in 1904 and 1910.

The main arguments that have been urged for and against the imposition of this tax in British India may be summarised as follows:—

(1) The tax is levied in almost every civilised country in the world, and it falls upon a very widespread conventional necessity. It is indirect, and the incidence of the tax, if carefully adjusted, would be little felt by the consumer, because the effect of a moderate duty would scarcely be distinguishable among the fluctuations to which the price of tobacco is constantly liable as a result of variations in the season and other natural causes. Since tobacco is not a necessity of life, it is theoretically a more suitable object for taxation than salt, which is one.

(2) The existence of a high import duty on manufactured tobacco without any countervailing excise involves inequality in the taxation of the same article as between different classes.

(3) The revenue to be obtained from an efficient system of taxation would probably be very considerable.

Against this it has been urged that—

(1) The tax would be a new one and the resentment against it would not out-balance the somewhat theoretical and sentimental advantages of abolishing the salt tax. The change would not alter the incidence of taxation, because the use of tobacco and of salt is co-extensive.

(2) The peculiar conditions under which tobacco is grown and consumed in India render it difficult to devise a form of taxation which would be administratively feasible and not be too expensive.

(3) No simple system, such as that of licensing unaccompanied by a direct charge on consumption, would be expected to yield a revenue that was worth the trouble and unpopularity involved.

The present position of the industry—cultivation.

In Continental India two principal species of tobacco are grown—*Nicotiana tabacum* and *Nicotiana rustica*. The former kind is the more common and is the most important source of the tobacco of commerce. The second variety grows in Bengal, Assam and the Punjab. It gives a higher yield and requires a shorter time to come to maturity.

In Burma two main varieties are grown, the Burmese tobacco and the Havana. The latter is used for the wrappers of cheroots.

The acreage under tobacco in British India is remarkably constant, being usually just over a million acres. Between 1909-10 and 1921-22 it has been below this figure only three times and has only once (1919-20) reached 1,100,000 acres. Though cultivation is found in practically every district, the important centres are comparatively few in number, and in 1921-22 half the area under cultivation in British India was in twelve districts. These were

		ACS.
Madras	Guntur	38,500
	Coimbatore	34,600
	Vizagapatam	24,152
	The Agency tracts	23,677
Bengal	Rangpur	176,000
	Jalpaiguri	22,100
	Mymensingh	23,600
Bombay	Kaira	43,960
	Belgaum	37,551
Bihar and Orissa	Muzaffarpur	27,300
	Darbhanga	25,200
	Purnea	40,000

The land revenue generally is governed by considerations other than the crop grown, but in Burma, under the system of fluctuating assessments, a special rate is charged when land is cultivated with certain rich crops, of which tobacco is one, while in the United Provinces land that pays a high rent as tobacco land pays in consequence a specially high rate of assessment.

The yield is very variously estimated. In his Handbook of Indian Agriculture (1907) Mr. N. G. Mukherji says that a well-grown crop is expected to yield from 20 to 24 maunds (i.e., 1,650 to 1,950 lbs.) of cured leaves per acre. In 1910 the Bengal Director of Agriculture is quoted as giving for Tirhut an average figure of 1,180 lbs. per acre. A Burma estimate for the same period was 700 lbs. Assuming an average outturn of 1,000 lbs. to the acre, the gross annual production for British India would be in the neighbourhood of a thousand million pounds. The export value of Indian unmanufactured tobacco in 1922-23 was about Rs. 33 per 100 lbs. But in view of the probability that only the finer sorts of Indian tobacco can command a sale for export, it may perhaps be assumed that the average value of the whole crop is lower. Taking it at Rs. 20, the total value of the whole Indian crop would be about Rs. 20 crores. It must be recognised, however, that these calculations rest on a very vague basis.

The quantity of unmanufactured tobacco exported in 1922-23 was about 21 million pounds, valued at 72 lakhs. The quantity has not risen much since the pre-war years, but the average value has risen roughly 2½ times. The principal countries which take Indian tobacco are the eastern portions of the British Empire—Aden, Hongkong, the Straits Settlements and the Malay States, which together took 70 per cent of the total exports in 1913-14 and 58.8 per cent in 1922-23. France formerly took a large share, amounting to 41 per cent in 1918-19. This was probably due to the difficulties experienced by the Régie in obtaining leaf during the War. Since 1918-19 the trade has fallen to infinitesimal proportions. On the other hand since the War the United Kingdom has taken an increasing share of the trade. In 1922-23 it took 16.6 per cent of the total quantity exported and 21.2 per cent of the value. In 1924-25 it took over 8 million pounds, representing 19 per cent of the total quantity exported and 18.9 per cent of the value. **Exports.**

The imports of manufactured tobacco are dealt with later. Those of unmanufactured tobacco amounted in 1913-14 to 282,000 lbs. valued at Rs. 2.81 lakhs, and rose in 1922-23 to 1,228,000 lbs., valued at Rs. 16.88 lakhs. The great bulk of the imports in the latter year came from the United States of America, which contributed 57.2 per cent of the quantity and 78.3 per cent of the value. The only other important source was "other ports of the British Empire", which contributed 21.3 per cent of the quantity and .6 per cent of the value. In other words, the imports are chiefly of **Imports of unmanufactured tobacco.**

American leaf to be made up into cigarettes in India. It was reported in January 1924 that practically the whole of the American leaf imported into Calcutta was consigned to cigarette manufacturers.

It may be observed that there is an enormous difference between the value of the imports and the exports of this unmanufactured tobacco. In 1922-23 the value of the tobacco imported was Rs. 1.37 per lb., while that exported was only worth Rs. .33 per lb.

Manufacture.

The information collected from Local Governments in response to the questionnaire issued in May 1924 on the subject of manufacture in India may be summarised as follows:—

For the manufacture of cigars, there are two large scale factories in Madras, one employing 386 and the other 135 workers, and a smaller one in Rangoon. In the former province there are fourteen smaller factories employing 477 workers, and in Burma sixteen employing 538. In addition cigar-making is a cottage industry in Madras, Bombay and Burma, in which provinces 14,468 persons are employed in tobacco manufacture.

The chief cigarette factories are at Monghyr and Bangalore. Both these are on a very large scale, the former employing 2,450 workers. Calcutta has eight smaller factories, of which four are large enough to come within the scope of the Indian Factories Act. There are some also in Bombay.

For the manufacture of *biris*, Bihar and Orissa has 150 factories, employing 4,600 hands, the Central Provinces 241 with 12,500 hands.

The information available regarding the output of the factories is very meagre. The fullest enquiries were those made in the beginning of 1916. It was then estimated that the output of cigars from factories employing power-driven machinery was about 500,000 lbs. Since that date, however, there has been a considerable falling off in the exports, largely as a result of the levy of duty in England on the weight, which has imposed a comparatively heavier burden on the cheap Indian cigars, and it is probable that the quantity now made is less. For the output of cigarettes by power-driven machinery there are more detailed figures. The final estimate reached in the enquiry above referred to was that the annual output amounted to

Monghyr	2,400	millions.
Bangalore	1,000	,,
Calcutta (3 factories)	200	,,
Bombay	12½	,,
	3,612½	,,

It was estimated that Indian-made cigarettes weighed about 2½ lbs. per 1,000.

In recent years there has been a considerable development of the manufacture of cheap cigarettes in India, designed on the one hand to replace the cheap American article, the import of which was checked by the heavy customs duty, and on the other to compete with the *biri*, which might otherwise have filled up the gap. The latest information available indicates an output of machine-made cigarettes of from 4,000 to 4,500 millions a year.

Imports of manufactured tobacco and the tariff rate.

As has already been indicated, British India differs from almost all the rest of the world in the absence of any internal taxation of tobacco except for the duties levied in certain towns and (if that can be classed as special taxation) the crop rate levied in Burma on land cultivated with tobacco in common with certain other special crops.

From 1882 to 1894 this freedom from taxation was extended also to imports from abroad, but in the latter year manufactured tobacco along with other articles was brought under the general 5 per cent tariff. The rate

remained unaltered until 1910, when the Government were compelled to impose additional duties on some articles of luxury to balance the budget. The Hon'ble Sir Guy Fleetwood Wilson justified the increase in the duties on tobacco as follows:—

"Upon tobacco the present taxation—5 per cent *ad valorem* on manufactured, and nothing at all on unmanufactured tobacco—is ludicrously inadequate. In 1907–1908 over 6 million pounds of tobacco were imported into India, and all that it paid to Government was £25,000; in England it would have paid forty times as much. What we now propose is a set of rates which, in the case of cigarettes, is represented by Rs. 2 a lb. They may diminish import for a time, but incidentally they may check the rapid growth of the cigarette habit, which is not without its danger to the rising generation in India. . . . We prefer to take the extra taxation which we require by substantial duties upon a few articles of comparative luxury rather than by interfering with the all-round uniform rate upon a variety of less important articles, many of which may be described as necessaries."

The following were the rates of duty imposed in that year:—

	Rate. RS. A. P.
(1) Unmanufactured tobacco	1 8 0 per lb.
(2) Cigars	2 8 0 ,,
(3) Cigarettes weighing less than 3 lbs. per 1,000 ..	5 0 0 per 1,000.
(4) Cigarettes weighing 3 lbs. or more per 1,000 ..	2 0 0 a lb.
(5) Other sorts of manufactured tobacco	1 10 0 per lb.

These rates were reduced in the following year to—

	RS. A. P.
(1) Unmanufactured tobacco	1 0 0 per lb.
(2) Cigars	1 10 0 ,,
(3) Cigarettes weighing less than 3 lbs. per 1,000 ..	3 2 0 per 1,000.
(4) Cigarettes weighing 3 lbs. or more per 1,000 ..	1 4 0 per lb.
(5) Other manufactured tobacco	1 2 0 ,,

In 1916 the Government decided to revert to *ad valorem* duties because it was found that the specific duties imposed in 1910 were administratively inconvenient and that they also pressed heavily on the cheaper brands, which formed the bulk of the imports. The duty on the cheap cigarettes amounted to as much as 45 per cent of value while in the case of a large number of the better brands of cigarettes, particularly those imported from Egypt, the proportion of duty to value was considerably less, in some cases as low as 9 per cent. A certain amount of inconvenience had also been caused to importers by the necessity of weighing the cigarettes to ascertain the duty leviable at the quantitative rates. The new rates introduced in 1916 were as follows:—

	Rate. RS. A. P.
(1) Unmanufactured tobacco	1 0 0 per lb.
(2) Cigars and cigarettes	50 per cent *ad valorem*.
(3) Other sorts of manufactured tobacco ..	1 8 0 per lb.

The *ad valorem* duty on cigars and cigarettes and the specific duty on other sorts of manufactured tobacco were raised in 1921 to 75 per cent and Rs. 2-4-0 per lb., respectively.

In 1925 the Government decided to revert again to specific duties, because an *ad valorem* duty penalised known brands as compared with unknown brands. The former paid on local wholesale market value, while the latter were assessed on invoice value since the market value was not easily ascertainable. It was also discovered that invoice values were often understated and the only remedy was for the Customs Officers to take over the cigarettes at these values, which was a risky proceeding, since cigarettes deteriorate very rapidly. This state of affairs had led to several complaints from the trade, and the Collectors of Customs had also pressed for a specific duty. Moreover, cigarettes had begun to come in across the Siam-Burma frontier and through the Kathiawar ports, and it was advisable to have as simple a method of assessing duty as possible. The rates were accordingly altered in 1925 as follows:—

	Rs. A. P.
Unmanufactured tobacco ..	1 0 0 per lb.
Cigars	75 per cent *ad valorem*.
Cigarettes	10 8 0 per 1 000 when the value exceeds Rs. 10-8-0 per 1,000, and 7 0 0 per 1,000 when it does not.
Other sorts of manufactured tobacco	2 4 0 per lb.

The alterations described above have had far-reaching effects on the trade as will be seen from the following statement which shows the quantity and value of tobacco imported and the import duty collected since 1909-10:—

(In millions of lbs. and lakhs of rupees.)

Year.	Tobacco unmanufactured.		Cigars.		Cigarettes.		Other tobacco manufactured.		Total import duty.
	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.	
1909–10	2·70	11·7	·11	3·9	3·08	65·0	1·44	14·3	5·2
1910–11	·25	2·4	·06	2·7	1·11	36·4	·38	7·6	29·9
1911–12	·16	1·8	·08	3·4	1·41	51·0	·56	10·6	25·9
1915–16	·14	1·8	·05	2·7	1·69	63·0	·55	12·6	28·4
1916–17	·21	2·0	·05	2·2	2·40	103·1	·71	17·8	46·0
1920–21	·71	9·2	·07	4·5	6·21	256·3	·62	25·9	131·3
1921–22	1·05	16·9	·02	2·0	2·74	131·3	·25	14·8	101·4
1922–23	1·23	16·9	·02	2·0	4·09	185·3	·34	21·5	154·7
1923–24 (7 months).	1·87	21·5	·01	·8	2·23	100·1	·18	11·3	85·5

The most notable change has been the creation of a local cigarette industry, which has been encouraged by the disparity between the rate of duty on cigarettes and that on unmanufactured tobacco, which is imported largely for use in cigarette making. It has been estimated that of the tobacco used in one large factory the proportion of local to imported tobacco is as 5 to 4.

Consumption.

It is needless to add that the consumption of tobacco in India is very large. It is prohibited to Sikhs and discountenanced by some of the higher castes, but otherwise it is consumed, both by chewing and smoking, sometimes by members of both sexes. Even the consumption by juveniles has in several places been considered of sufficient importance to warrant legislation or proposals for the same.

Possible methods of taxing tobacco in British India.

In the many discussions that have taken place in the past as to the possibility of taxing tobacco five chief methods have been considered singly or in combination. These are:—

(1) Prohibition of cultivation so as to secure that all tobacco consumed pays the import duty.
(2) A monopoly of production, vend or manufacture, or a combination of these.
(3) An acreage duty.
(4) An excise.
(5) A license fee for sale.

The first system is in force in some of the Indian States, such as Travancore and Cochin, where it produces a very considerable revenue, but a consideration of the figures shows that, though it might be possible over local areas, it would not be practicable for India as a whole. There are over a million acres of land under tobacco cultivation and any such plan would involve the growing of some less valuable crop and consequently heavy loss

to the cultivators. Nor would it be economically sound to prohibit the cultivation of a crop merely in order to overcome the administrative difficulties connected with the imposition of a tax.

A Government monopoly—of raw material.

It would appear from the past discussions that a Government monopoly has been regarded as a plan that only needed mentioning to be rejected on the ground of the magnitude of the operation involved. That the undertaking would be a vast one is unquestionable, but there are considerations which tend to show that it would not be altogether impracticable. One main objection would appear at first sight to lie in the widespread nature of the cultivation. It has been seen above, however, that half of this is concentrated in twelve districts. This may be compared with the twenty-nine districts in which cultivation of opium is still permitted and with the same number of *departments* in France over which the French Régie operates. It may further be noted that a monopoly was actually in operation for thirty-three years in three districts and yielded an average income of £87,572.

— of manufacture.

That, however, was a monopoly of raw material only. A monopoly of manufacture would involve other and far more difficult considerations, and having regard to British opinion generally of the French monopoly tobaccos (to mention no other reasons), it may safely be said that the strongest objection would be taken to any idea of replacing private enterprise at this stage. So long as private enterprise continued in the matter of manufacture and export, the considerations involved in a monopoly of raw material would not be very different from those involved in an excise.

— of retail vend.

A Government monopoly of retail sale is not to be thought of but a monopoly given to a company is very successful in Sweden, and one given to a farmer produces a large revenue in Nawanagar. Similar monopolies in the case of liquors and intoxicating drugs represented an early stage in the development, to be replaced by monopolies of smaller areas and ultimately by the sale of single shops, each having a practical monopoly over a limited area. In the case of tobacco there is not the same motive for limiting the number of places of vend, and if the direct duty is high enough, the ultimate stage may be, as in England, a liberal issue of licenses subject to payment of a small fixed fee.

An acreage duty.

An acreage duty was the plan actually proposed in Bengal in 1860 and is in force now in certain Indian States. It has been objected to on the grounds that it would be a breach of the land revenue settlement, that owing to the wide spread of the cultivation it would involve a very large staff to assess and collect it, and that, owing to the variation in outturn, it would be impossible to levy it at a uniform rate.

— would involve restriction of cultivation.

It would seem fairly obvious that the imposition of such a duty would involve, as the West Coast monopoly did and as the French monopoly still does, the licensing of cultivation and the refusal of a license for less than a minimum area or for land that would not produce an average crop. This would result in the stoppage of much petty cultivation and cause hardship to that extent. But the fact that this was the case would go far to meet the two latter objections. If cultivation was limited to substantial cultivators who had a considerable sum in duty at stake, there would not be the necessity for innumerable inspections of petty areas or the enormous variations in outturn that might be expected if such a duty were imposed on all cultivation as it exists at present.

The argument that it would be a breach of the settlement.

As regards the alleged breach of the settlement, the tax would normally be one on consumption which would be passed on by the cultivator to the consumer and the only real hardship that would arise would be where a specially high rate of assessment was levied on the ground that a particular land gave a high yield under tobacco. Even in this case the hardship would not arise if an alternative crop which would give an equal yield were available. It is possible, however, that there might be considerable feeling excited among the ryots on the subject.

The difficulty in the case of exports.

Another difficulty that has been suggested is in regard to the rebate that would be necessary in the case of tobacco grown for export. This would certainly be a serious difficulty if the rates were not uniform. A uniform rate, however, whatever its disadvantages, would seem to be an essential of any such system. This is the practice in the Indian States that impose a duty on area and was the proposal in Bengal in 1860. Meanwhile, as has been seen, under the monopolies, both formerly on the West Coast and at the present day in France, it has been found necessary to refuse licenses to land that will not grow an average crop.

The duty considered as an adjunct to an excise.

It may perhaps be suggested that the circumstances in which an acreage duty would be most likely to be successful would be as an adjunct to a system of excise. Supposing, for instance, that it were decided to impose an excise on all tobacco issued for local consumption, but not on what was exported, and at different rates for raw tobacco and for different classes of manufactured tobacco. To do this it would be necessary to bring all the tobacco grown into bond. The duty would then be levied at the rates fixed on all the quantities issued from bond except those for export, which would go free. In such circumstances a duty on cultivation would serve a very useful purpose if it were imposed on the understanding that it would only be levied if a quantity of produce proportionate to the area cultivated were not brought into the bonded warehouse nearest to the cultivation within a fixed time. This would afford an effectual check on the cultivator without involving him in any pecuniary loss.

The case for an excise.

A system of excise, levied either through means of stamps or on the accounts, is, as has been seen, the system of taxation most commonly in force, and such a system is generally regarded as a necessary corollary of a high customs duty.

The manner in which a general excise would be collected has just been suggested. That is to say, the raw material, whether imported or locally grown would be brought into bond, for which purpose an acreage duty, to be levied on what was not accounted for, would prove a useful adjunct. The bonded warehouse might be private or public. The factories would be in private hands, but would have bonded warehouses attached. Duty would be paid at the rates fixed on all issues except for export.

The chief obstacle—that what is chiefly consumed is the raw article.

A fact which differentiates India from all other countries and which presents an obstacle which is commonly regarded as insuperable to any such scheme is that the great bulk of the tobacco consumed is not manufactured at all and is sold in a partially cured state like any vegetable in the bazaar. It is thought that to force all this into and out of bonded warehouses would involve an amount of interference with the customs of the people that would be unjustifiable, while the imposition of a direct duty that would be at all considerable would be a hardship.

An excise on manufactured tobacco.

The question of an excise has therefore generally been examined from the point of view of the articles that compete with those that pay the tariff rate of duty. The chief of these are the cheap cigarettes. It has been seen that the large increases made in the tariff have led to the killing of the trade in cheap American cigarettes and to the establishment of large factories in India. The low rate of duty on unmanufactured tobacco has further encouraged manufacture from imported tobacco behind the tariff wall. There are therefore two alternatives, either to enhance the tariff rate on unmanufactured tobacco or to levy an excise on locally-made cigarettes. In the interests of the employment of Indian labour, the latter appears to be the more desirable course. The rate that has been suggested is 8 annas a thousand, which, on a production of 4,500 million cigarettes a year, would give a yield of 22½ lakhs of rupees. Since it would be levied at a small number of well-conducted factories, it would be most convenient, at the outset at any rate, to levy the excise, as the cotton excise duty was levied, on the books.

A similar duty would be levied on pipe or cigarette tobacco made up after the European fashion. Should it be found that the levy of such an excise on cigarettes led to organized manufacture of *bidis*, it might be found desirable to extend it to them also.

The case of cigars is more difficult in view of the recent decline of the export trade. An enquiry into the conditions of the trade would appear to be necessary, but tentatively a duty of 3 annas a pound, which would amount approximately to 45 per cent *ad valorem*, is suggested. This is estimated to yield about a lakh of rupees, but a large part of that would have to be deducted on account of the rebate of duty on the imported leaf.

The above proposals apply only to the case of factories in which power is used. A very considerable difficulty would be presented in both cases by the competition of hand manufacture. The only plan that suggests itself for meeting this is one analogous to that adopted in Burma in the case of the small salt manufacturer, that is to say to take power to levy the direct duty in every case and in that of the small manufacturer to compound it for a fixed license fee based on the number of operatives

employed, the quantity of raw material used or other such general considerations. The places of manufacture would then be placed under the control of excise officers who would take steps with a view to the imposition of the direct duty if in any case they saw reason to suppose that it would exceed the amount of the composition fee.

Monopoly of vend—general considerations.

The question of a monopoly of vend has already been touched upon. Where there is no direct duty, consumption can be taxed indirectly through a high license fee. As the direct duty grows, the indirect charge may decline until, at the point where the direct duty has been raised as high as is practicable, the charge for vend may become a mere registration fee. This is the plan which was pursued at the earlier stages in the case of intoxicants in India, though in the later stages the operation of the causes at work has been disturbed by the very large reduction of shops, which has resulted in maintaining and enhancing the value of the privileges of vend that remained.

A simultaneous tendency is to break up the farms. These generally commenced with large areas, generally districts, in which a single contractor had a monopoly. As time went on and the administration improved, the area was reduced to a tahsil; then to a group of villages; and finally to a single village.

As applied to the case of tobacco.

In the case of tobacco it has always to be remembered that there is not the same reason for restriction of consumption that there is in the case of intoxicants. Subject to this the process of development might be not dissimilar.

The first step might be the prohibition of sale without license and the sale by auction to contractors of permission to set up shops without limit of numbers, but subject to registration of particulars, in fixed areas. In course of time the numbers would probably tend to be reduced and the excise staff would secure reliable information as to the organization of the trade and the relations between cultivators, wholesale dealers and shopkeepers. Meanwhile the area of the contracts might be reduced and the wholesale trade might be brought under control, thus producing a scheme on the lines of that which is successfully working in Cochin. Finally the stage might be reached at which the cultivator was prohibited from selling to any one but a licensed vendor, wholesale or retail, or a licensed manufacturer, while the limit of private possession was reduced to a fixed figure as is done in the case of liquors, *ganja* and opium.

In the meanwhile again it would be desirable that the sale of tobacco, whether imported or locally made, which is made up after the European fashion should also be brought under restriction, but in this case, in view of the duty levied, a fixed fee would be sufficient. In other words, the position of these tobaccos would be analogous to that occupied by 'foreign' liquors, whether imported or made in the country.

The above proposals are put forward on the assumption that the licensing of vend is to be combined only with the levy of customs duty at the tariff rate and of an excise duty on the local production of tobacco made up after the European fashion. That is to say, their chief aim is to secure the levy of an indirect excise on country tobacco. They could, however, be applied, *mutatis mutandis*, in the case of a general system of excise or of a duty on cultivation.

The idea that an excise system would yield little revenue is not supported by the evidence.

The important factor is that, in previous discussions of the taxation of tobacco in British India, a plan of taxation through licensing alone has been repeatedly rejected on the ground that the revenue to be derived from such a plan would be insignificant. An attempt has now been made to demonstrate that in Foreign Territories and Indian States the taxation of tobacco on these principles is yielding a revenue that is very considerable; and that it would be a comparatively simple matter to apply in British India a plan of taxation similar to that applied in these Possessions and States. And as giving an idea of the revenue possibilities of such an application it may be mentioned that a tax yielding the same rate of revenue per head as that secured in Travancore would give for the population of British India a yield of no less than 12 crores of rupees. It may be added that the same facts show that the system is one which could be introduced piecemeal into almost any local area, and could exist in one stage of development in one area alongside another in which it was more or less highly developed. There is thus ample scope for experiments, whether in provinces as a whole or in single towns or local areas.

There is no reason to suppose that such a system would lead to malpractices.

Another consideration is whether such a system would lead to chicanery and oppression. The possible sufferers are the cultivators, who might be forced to sell their crops at inadequate prices, the consumers, who might be made to pay at exorbitant rates, and the public generally, who might be involved in prosecutions for excise offences.

The position of the cultivator would be similar to that of the grower of cocoanuts in an area where the tax on *tari* is found. He would in all probability grow his crop under agreement with, and perhaps after having received an advance from, a licensed dealer. He would not be bound except under private agreement to deliver to any particular monopolist, but would have an alternative market in the other monopolists, the factories or the dealers for export. He could, as in France, be allowed to keep the produce of a few plants for his own consumption. It does not appear that he need suffer any hardship beyond that involved in being prohibited from selling to an unlicensed person.

As regards the consumer, prices would undoubtedly rise, or there would be no tax, but there would be several checks operating to prevent a rise to an excessive extent. A rise to a point that materially reduced consumption would be against the interests of the monopolist. Meanwhile retail shops would continue to be numerous and to compete with one another and the facilities that existed for illicit sales would themselves be a check on the rapacity of the monopolists.

Lastly there is the danger that the monopolist would utilise his position to oppress his enemies by malicious prosecution. It is not contemplated that prosecutions would be instituted by the monopolists direct. They would all be sifted by the Excise Officers, who have in most provinces an efficient process of preliminary enquiry, and who would unquestionably take action against a monopolist who misused his powers. So long as this danger is not found to exist in the case of farmers for the sale of *tari*, *pachwai*, etc., there seems to be no reason to suppose that it would arise on the introduction of a similar system in the case of tobacco.

The danger of competition from Indian States and Foreign Possessions.

Another difficulty that applies to all systems is the danger of competition from Indian States and Foreign Possessions. This of course is a difficulty that cannot be ignored. At the same time means have so far been found of grappling with it in the case of excisable articles, while in the case of tobacco the cause for complaint, if any, has so far been on the part of the neighbours of British India, which tax tobacco while British India does not.

Summary of conclusions.

It may be useful to summarise the conclusions presented in the preceding paragraphs:—

(1) Tobacco is universally recognised as a conventional luxury and affording one of the most suitable subjects for taxation, and affords a considerable proportion of the revenues of most countries.

(2) The commonest system of internal taxation is through an excise, but monopolies are resorted to in a number of countries.

Though in British India taxation is now levied chiefly through the customs and the octroi, there is evidence to show that a monopoly was successfully worked for thirty-three years in part of Madras, while an excise system has been in force for about a century in the City of Bombay.

(3) Meanwhile other forms of taxation are common in Indian States and Foreign Possessions and yield in some cases very considerable revenues.

(4) Of the objections taken to the imposition of further taxation in British India in the past those arising out of the wide spread of the cultivation and the practice of consuming tobacco in an unmanufactured state still retain much force.

(5) But an analysis of the cultivation shows that half of it is limited to twelve districts.

(6) Meanwhile the great enhancement of the tariff rates and the growth of the local cigarette industry behind the tariff wall indicate the desirability of an excise in the case of goods that compete with those that are imported.

(7) Further the success of licensing systems in other parts of India shows that the idea that a system of that nature would be useless from the revenue point of view is ill-founded.

APPENDIX X

Chapter X—Taxes on Transactions.

A Note by the Legal Adviser to the Committee on the duties levied under the Indian Stamp Act.

INTRODUCTORY.

Origin of modern stamp duties.

Stamp duties in their modern form date from the year 1624, when they were first introduced in Holland. The accustomed methods of taxation having proved insufficient, the Republic, with a view to providing additional funds for carrying on the war with Spain, offered a reward to the person who should suggest the best new tax. Among the suggestions which were received was the introduction of the *vectigal chartæ*, or stamp duty, which was approved. Since then, stamp duties have become almost universal, and now form a very important item of public revenue in every country, affording a striking example of Adam's Smith's remark that "there is no art which one Government sooner learns of another than that of draining money from the pockets of the people".*

Stamp duties do not themselves constitute a separate tax, but are a method of collecting different kinds of revenue.

Stamp duties do not themselves constitute a separate tax, but are a method of collecting different kinds of revenue. People are required in certain circumstances to buy stamps of a certain value from a public authority and to attach them to certain documents. Almost any tax can be collected in this way, and many taxes which have no sort of connection with one another are so collected in various countries. For instance, stamp duties include duties on such different things as patent medicines, playing cards, newspapers and advertisements, policies of assurance, appointments to various offices, grants of dignity and marks of distinction, certificates of permission to carry on various professions or trades (e.g., those of attorney and pawn-broker), contracts and conveyances, legacies and successions, and so on. Besides the mode of collection by means of stamp duties there is nothing in common between these taxes, either in respect of their policy or in respect of their effect. The incidence of stamp duty must therefore be examined with reference to the objects or transactions which they are intended to tax.

In this country stamps are classified as judicial and non-judicial.

In this country stamps (excluding postage stamps) are roughly classified into two groups—

(a) Judicial.
(b) Non-judicial.

The former are regulated by various Acts, the most important of which is the Court-fees Act, 1870, and represent the fees payable by persons having business in courts and public offices. To them must also be added in some provinces the sums realised by the sale of embossed papers on which copies given to parties by Judicial and Revenue courts and offices are transcribed. The sale proceeds of these stamps are credited to the same head as the sale of court-fee stamps, though they are not regulated by the Court-fees Act. Till 1867 the law relating to court-fees and that relating to stamps proper were contained in one and the same Act, the Stamp Act XXXVI of 1860, and afterwards in the Stamp Act X of 1862. Act XXVI of 1867 dealt with judicial stamps separately. The Act of 1870 consolidated the provisions as to court-fees contained in that Act and in various other enactments and first regularly designated them as court-fees in contradistinction to stamps used in connection with transactions outside the courts.

History of the Indian law of stamps.

Non-judicial stamps are now regulated by the Indian Stamp Act, 1899, as amended by subsequent enactments, and the expression 'stamp duties' is itself used to denote, not all the taxes which are collected by means of stamps, but the duties on various classes of instruments which are imposed by this Act. Prior to 1860, the stamp law was spread over various

* Wealth of Nations, Book V, Chapter II, Part II.

Regulations of the three Presidencies. By Act XXXVI of 1860 the subject-matter of these Regulations, together with several new provisions taken from the English statutes, was embodied in one enactment applicable to the whole of India. This Act was, with a few important additions, reproduced as Act X of 1862, which in turn was amended by Acts XVIII of 1869 and I of 1879, and finally took its present shape under Act II of 1899. Though, since the passing of this Act, there have been numerous important amendments in the law, the general outline of it has practically remained the same.

Judicial stamps generally denote fees for which a return is received, while non-judicial stamps are not fees, but taxes.

Judicial stamps mostly denote fees for which a return is received by the payer thereof through the services rendered to him by the courts or otherwise. In the case of *non-judicial stamps*, there is no such direct return. It is true that the existence of the State makes certain transactions possible, but that is a very indirect return for a tax levied on those transactions. The same is the case when a duty is levied for the permission to practice a trade or profession. Where, as in some European countries, stamp duties and registration fees are combined, there is a return in the superior probative value given to the documents, but that is a result traceable to the part of the duty that is attributable to the registration element. Thus, on the whole, it is clear that, in the case of stamp duties, the element of taxation largely preponderates over that of services rendered.

The views of economists on taxes of this sort.

The views of the economists are generally unfavourable to taxation through the medium of stamp duties. They describe them as subserving no principle and often falling on the wrong person. They are difficult of graduation according to ability. *In Holland, where they had their origin*, they were actually devised by the traders and merchants in the hope that they could be shifted to the community in general and the poorer classes in particular. As regards taxes on transfer of property, Adam Smith thought that they were all "more or less unthrifty taxes".* "Such taxes even when they are proportioned to the value of the property transferred are *still unequal*, the frequency of transference not being always equal in *property of equal value*; when they are not so proportioned they are still more unequal." He thought that taxes on the sale of land always fell upon the seller, who was obliged to sell it for reasons of "conveniency" or necessity and that they were therefore "*cruel and oppressive*". Bentham was of opinion that sales of property *inter vivos* were commonly brought about by want and "in intervening at this distressful season, the exchequer bases an extraordinary tax upon personal misfortune".† Mill was also of opinion that a tax on the purchase and sale of land was in most countries liable to the objection that it almost always fell on "a necessitous person in the crisis of his necessities".‡ He condemned all taxes which threw obstacles in the way of the sale of land or other instruments of production as tending to prevent the property passing into the hands of *those that could make the best use of it* and "assuming those modes of *aggregation and division* which were most conducive to its productiveness". Though the question of incidence of taxes on transfers would depend on the relative elasticity of the supply and the demand, *yet*, taxes on transfers must be regarded as *obstructive, however slightly, of transactions useful to the community*. As regards taxes on commercial instruments, Bastable says : "A tax on the formation of companies is so far a check to their establishment. Duties on the transfer of shares tend to keep capital from that particular form of investment, and to make these evidences of ownership less mobile. Even a small tax on cheques is a *limit to the extension of banking*, and a receipt duty is a charge on the *evidence of an important class of transactions in which everybody is sure to be concerned*".§ As regards taxes on insurances, they have been described as a direct *discouragement to prudence and forethought*. McCulloch doubted, in view of the vast importance of insurance, "whether it should be charged with any duty, however light".‖ A high tax on admission to a profession may deter the best persons from *entering into it*, or it may prevent a person from choosing the *profession most suited to*

* Wealth of Nations, Book V, Chapter II, Part II, Articles 1 and 2, Appendix
† Theory of Legislation : Principles of the Civil Code, Chapter XV.
‡ Principles of Economics, Book V, Chapter V, Section I.
§ Public Finance, Book IV, Chapter VIII.
‖ "On Taxation", Chapter VII, section 2.

himself. Hobson, in his 'Taxation in the New State' regards stamp duties generally as "a restraint *on* trade or other forms of presumable personal and social utility."* "They are", he says, "in their final incidence at the best nothing but an expensive way of tapping certain bits of income which, if left untouched, would yield their quota to ordinary direct taxation, while at their worst they are extortions *from persons who* possess no real ability to pay. For the most part, they are the cumbersome relics of a past, haphazard method of catchpenny improvisation, which has no place in any scientific system of finance".

Reasons for their popularity with financiers.

In spite of the fact that stamp duties have earned the condemnation of the economists, they are popular with practical financiers for various reasons. Thus—

(i) They have the force of long custom.
(ii) They are very convenient to collect and to supervise, and, in fact, they collect themselves.
(iii) Their incidence is not felt at the time of payment, because they are generally collected as part of the circulation or distribution of property.
(iv) They afford facilities for proportioning taxation to value. By grading the prices of the necessary stamps, the tax on any act or transfer can be adjusted to the amount dealt with.
(v) Moreover, there are few countries in which the state of the exchequer is such as to permit of their abolition.

GENERAL CONSIDERATIONS INFLUENCING THE RATES OF STAMP DUTY.

Guides to the rate of stamp duties.

But taxation on grounds of convenience or fiscal necessity is apt to overlook dictates of justice and prudence. While productiveness and equality are the most important elements in every tax, it is particularly important that they should not be lost sight of in the imposition of stamp duties.

One important limit to the levying of stamp duties lies in the fact that, beyond a certain stage, their maximum productiveness begins to diminish. An excessive enhancement of the rates of stamp duty *may* impede transfers of property and cause a diminution of business generally, with a resultant loss of revenue. Moreover, high rates of stamp duty are an inducement either to an evasion of the duties or to an entire neglect of the requisite formalities of stamping. As Bastable puts it, "the problem raised by this part of the tax system is on the *one* hand *to* avoid undue pressure on the circulation and *transference* of wealth and on the other hand to derive *sufficient* revenue *to* make the maintenance of the duties justifiable." It has to be remembered that what the stamp law deals with is often, not the bargain between parties, but the instrument which records that bargain. If the rates charged are too high, the parties *either* ignore the stamp law or find some means of evading it. For instance, if the stamp duty on a receipt is fixed too high, the payer may rely upon the credit of the payee; if the stamp duty on cheques is increased, parties may resort to other methods of transmitting money. Excessive stamp duties thus defeat their object, not only by retarding business, but by tempting persons who have to pay them to evade the law. The statement of Swift that, in the arithmetic of customs, two and two do not always make four, but may sometimes make one, is thus equally applicable to stamps.

No doubt it is possible for the State by legislation to make writing compulsory for the validity of particular transactions and to levy stamp duties on such writing. The English Stamp Law, for instance, contains provisions for compulsory writing in the case of appraisements, contract notes and various other instruments. In India also various transactions are required *to* be in writing. But to compel the execution of a document in the first place and then to make it an occasion for the levy of a duty may result in certain cases in considerable hardship. To quote Bastable again, "the place of taxation on acts is a subordinate one. It cannot wisely be used to collect as large a revenue as

* Taxation in the New State, page 125.
Ibid, page 126.

either the primary taxes on income and property or the duties on consumption". One of the main justifications for a stamp duty is that its payment synchronises with the circulation of money or distribution of property and is not seriously felt. But this justification would cease to exist the moment the tax became so heavy as to be oppressive.

Thus, the principal guides to the rates of stamp duty may be stated to be—

(1) the point at which the value of the convenience or utility attaching to the use of a particular kind of document or to resort to a particular kind of transaction approaches the amount of the stamp duty involved,

(2) the point of diminishing returns, or in other words, what the traffic will bear,

(3) the point at which hardship is involved on any class of the community.

Before subjecting to these tests the rates of stamp duty prescribed by the schedule to the Indian Stamp Act as payable on various classes of instruments, it is desirable to refer to certain general considerations connected with the framing of the schedule of rates.

Stamp duties are (a) *ad valorem* or (b) fixed.

Stamp duties are calculated on two distinct bases:—

(a) *ad valorem* duties, dependent either on the amount or value of the consideration or on the effect of the instrument and its operation,

(b) fixed duties imposed on documents satisfying a given description, expressed or implied.

Cases in which a double classification is appropriate.

Where the transaction denoted by the instrument is capable of valuation, an *ad valorem* duty is *prima facie* appropriate. In cases in which the transaction does not admit of valuation, an *ad valorem* duty is out of the question. There are also certain commercial transactions of great frequency, such as those evidenced by cheques and receipts, in respect of which, though there is no difficulty in valuation, an *ad valorem* duty would cause so much trouble and annoyance that a small fixed fee is more profitable to the exchequer. A third class of cases arises when it is not possible, in view of the facts and circumstances, to state at the outset what exactly the value of a transaction denoted by an instrument may ultimately turn out to be. Such, for instance, is the case of an administration bond, or a fidelity bond, or a share transfer deed delivered at the time of deposit of stocks and shares as security. In the first two of these cases, though an amount may be mentioned in the bond as the limit of liability under it, the liability either may not arise at all or may not extend to the maximum limit mentioned in the bond. In the third case, the instrument may never have to be put into operation as the debtor may not make default. In such cases, the appropriate duty is a fixed duty rather than an *ad valorem* duty. But, in order to give the benefit of a smaller duty when the amount involved is small, the method is adopted in some instances of making the fixed duty the maximum, subject to payment of an *ad valorem* duty in cases where a smaller duty would be more appropriate to the amount involved.

Instruments classified under these categories.

The following table contains a list of the more important instruments falling under the categories of documents paying (1) *ad valorem* rates of duty, (2) fixed rates, (3) combined *ad valorem* and fixed rates:—

Ad valorem scale.	Fixed scale.	*Ad valorem* up to a point and then fixed.
1. Agreement, if relating to the sale of a Government security or share in an incorporated company. 2. Agreement to lease. 3. Agreement to deposit title-deeds, pawn or pledge.	1. Acknowledgment. 2. Adoption deed, authority to adopt. 3. Entry as advocate or attorney 4. Affidavit. 5. Agreement. 6. Appointment in execution of a power. 7. Apprenticeship deed.	1. Award. 2. Appraisement. 3. Administration bond. 4. Customs bond. 5. Indemnity bond. 6. Security bond. 7. Reconveyance of mortgaged property.

Ad valorem scale.	Fixed scale.	*Ad valorem* up to a point and then fixed.
4. Bill of exchange payable otherwise than on demand. 5. Bond. 6. Bottomry bond. 7. Conveyance. 8. Debenture. 9. Dower deed. 10. Exchange. 11. Further charge. 12. Gift, not being a settlement or transfer. 13. Lease. 14. Mortgage deed. 15. Mortgage of a crop. 16. Contract note in respect of stock or marketable security. 17. Partition deed. 18. Insurance. 19. Power of attorney given for consideration as authority to sell property. 20. Promissory note payable otherwise than on demand. 21. Respondentia bond. 22. Settlement and revocation of settlement. 23. Share warrant. 24. Transfer (i) of shares, (ii) of debentures.	8. Articles of association of a company. 9 Articles of clerkship. 10. Bill of exchange payable on demand. 11. Bill of lading. 12. Deed of cancellation. 13. Cheque. 14. Composition deed. 15. Copy of extract 16. Delivery order in respect of goods. 17 Instrument of partnership or dissolution of partnership. 18. Instrument of divorce. 19. Letter of allotment of shares. 20. Letter of credit. 21. Letter of licence. 22. Memorandum of association of a company. 23. Notarial act. 24. Contract note in respect of goods. 25. Note of protest by a master of a ship 26. Power of attorney, not being an authority given for consideration for sale of property. 27 Protest of bill or note. 28. Proxy. 29. Receipt. 30. Shipping order. 31. Warrant for goods.	8. Release. 9. Declaration of trust. 10. Revocation of trust 11. Surrender of lease. 12. Transfer of interest secured by a bond, mortgage deed or policy of insurance, or of trust property from one trustee to another trustee or from a trustee to a beneficiary.

Certain suggestions for regrouping.

(i) Instruments relating to the formation of limited companies.

It is proposed now to consider certain cases in which a regrouping of these categories has been suggested. In England, the memorandum of association of a company and the articles of association of a company have each to bear a deed stamp of 10s. In addition to this, under section 112 of the English Stamp Act, 1891, as amended by section 7 of the Finance Act of 1889 and section 39 of the Finance Act of 1920, an *ad valorem* stamp duty is also imposed on the nominal share capital of any company with limited liability at the rate of £1 for each £100 or portion of £100, and a like duty upon any registered increase of capital of such a company. The stamp duty is leviable on the statement, which is compulsory in England, of the amount of the nominal share capital and of any increase of share capital. In India, the only stamp duty payable is Rs. 25 on the articles of association and Rs. 15 on the memorandum of association.* It has been suggested that the imposition of an *ad valorem* duty as in England is desirable, and a proposal has been made that the stamp duty payable by limited companies upon the memorandum of association and the articles of association should be reduced to Rs. 10 each and that an additional duty of 2 annas for every Rs. 100 of the nominal share capital should be imposed. This course would be of advantage to small companies and is not likely to be felt as a hardship by the larger ones, and would, on the whole, be beneficial to the public exchequer.

* Unless expressly stated otherwise, the rates mentioned here and elsewhere in this note are those prescribed by the Imperial Act prior to its amendment by provincial legislation.

ii. Deeds of adoption.

While adoption is in several cases a religious ceremony, deeds of adoption generally operate as documents of title to property and often contain a description of the property of the adoptor over which the adoption would give a right to the person adopted. They now pay a fixed duty of Rs. 10, enhanced in various provinces by the local legislatures to Rs. 15. While this duty acts as a deterrent to the creation of documentary evidence in the case of adoptions by owners of small properties, in the case of large properties it allows a potential transfer of title to go almost untaxed. It may be considered whether the fixed fee should not be reduced and a duty imposed, in the cases in which title is created to considerable property, which is graduated as in the case of that on conveyances but at a rate which would be, say, one-half or a quarter of the rate imposed in that case.

iii. Deeds of release.

Certain kinds of release deeds, *viz.*, those having the effect of conveyances or transfers, may well be removed from the lists of instruments paying *ad valorem* rates up to a point only. There is no reason why these documents should not pay an *ad valorem* duty throughout the scale instead of paying it only up to a value of Rs. 1,000.

iv. Deeds of cancellation.

At present all instruments of cancellation pay a fixed duty of Rs. 5 whatever the stamp duty payable on the instrument sought to be cancelled. For instance, a document to revoke a sale deed or a deed of gift would pay Rs. 5, though the duty payable on such sale deed of gift deed was only Re. 1. In such cases, it is cheaper for a party to obtain a reconveyance of the property. Such a reconveyance, however, does not truly represent the contract between the parties, and this may lead to trouble. It appears desirable to fix in the case of a cancellation deed a duty of Rs. 5, or the duty payable on the instrument sought to be cancelled, whichever is less.

The *ad valorem* rates should ordinarily be proportionate and not progressive.

The modern acceptance of the theory of taxation according to faculty has led to occasional suggestions for the introduction of the principle of progression in the graduation of stamp duties, in lieu of what is to all intents and purposes a proportionate rate. This proposal may perhaps best be considered in the light of a concrete instance. Taking the scale for bonds as an example, the present Imperial scale is as follows:—

	RS.	A.	P.
Where the amount or value secured does not exceed Rs. 10 ...	0	2	0
Where it exceeds Rs. 10 and does not exceed Rs. 50 ...	0	4	0
,, 50 ,, ,, 100 ...	0	8	0
,, 100 ,, ,, 200 ...	1	0	0
,, 200 ,, ,, 300 ...	1	8	0
,, 300 ,, ,, 400 ...	2	0	0
,, 400 ,, ,, 500 ...	2	8	0
,, 500 ,, ,, 600 ...	3	0	0
,, 600 ,, ,, 700 ...	3	8	0
,, 700 ,, ,, 800 ...	4	0	0
,, 800 ,, ,, 900 ...	4	8	0
,, 900 ,, ,, 1,000 ...	5	0	0
and for every Rs. 500 or part thereof in excess of Rs. 1,000.	2	8	0

The general idea on which this scale is founded may be said to be to impose on the average a tax of one-half per cent. If instead of this proportionate scale, there were prescribed a progressive scale in which the average rates of duty increased with the amounts secured, the result would inevitably be to diminish the number of transactions relating to large amounts. A single transaction for a large amount would be split up into separate transactions for smaller amounts, and thus documents which ought to come under a higher rate of duty would be manipulated so as to come under a lower rate. An illustration of this device is afforded by the facts which led to the enactment of the Stamp Amendment Act I of 1912. The Stamp Amendment Act of 1910 had raised the duty payable on bills of exchange and promissory notes of a value of from Rs. 600 to Rs. 1,000 to a rate higher than that payable on such documents up to Rs. 600; and in respect of bills of exchange and promissory notes for sums above Rs. 1,000, the rates were made even higher. The result was that large bills were broken up into numbers of small bills, and stamp duties were evaded. The Act of 1912 had accordingly to be enacted for the purpose of raising the duty on bills of exchange and

promissory notes for amounts not exceeding Rs. 1,000 in roughly the same ratio as the enhancement which had been effected in 1910 on bills which exceeded Rs. 1,000. On the other hand, it goes without saying that there is no reason for making the taxation regressive, in other words, for taking a lower proportion in the case of transactions of larger values than in that of transactions of lower value. Taxes should therefore bear a uniform proportion to the value of the property dealt with.

Steps in the scale should not be too remote.

In charging duties by average scales in proportion to the value of the property it is necessary to see that in the case of ordinary transactions such as bonds, conveyances, etc., the steps in the scale are not too remote from one another. In the Stamp Acts of 1860 and 1862, the rates of duty payable on a bond stood thus:

	RS.	A.	P.
Up to Rs. 50	0	4	0
Between Rs. 50 and Rs. 100 ...	0	8	0
,, 100 ,, 200 ...	1	0	0
,, 200 ,, 300 ...	2	0	0
,, 300 ,, 500 ...	4	0	0
,, 500 ,, 700 ...	5	0	0
,, 700 ,, 1,000 ...	6	0	0
,, 1,000 ,, 2,000 ...	10	0	0
,, 2,000 ,, 3,000 ...	15	0	0
,, 3,000 ,, 5,000 ...	25	0	0
,, 5,000 ,, 10,000 ...	35	0	0
,, 10,000 ,, 20,000 ...	60	0	0
,, 20,000 ,, 40,000 ...	100	0	0

and so on.

Thus, a person executing a bond for Rs. 300 had to pay a duty of Rs. 2, while a person executing a bond for Rs. 310 had to pay a duty of Rs. 4. If, instead of executing a single bond for Rs. 310, he executed two bonds for Rs. 200 and Rs. 110, he need not pay a duty of more than Rs. 2, while if he executed two bonds for Rs. 260 and Rs. 50, respectively, he need not pay a duty of more than Rs. 2-4-0 altogether. As the amounts secured increased, the intervals of ascent became greater and the difference in the rates payable became more pronounced. Such disproportionate rates naturally led to the splitting up of documents and to evasions of stamp duty, and therefore in the Acts of 1869 and 1879, the intervals were made more numerous. At present, the intervals, in the case both of bonds and of conveyances, are as follows:—

From Rs. 100 to Rs. 1,000	Rs. 100
Above ,, 1,000	,, 500

Even with these intervals the splitting up of documents and evasion of duty are not uncommon. In the case of receipts such splitting has been constituted an offence under section 65 of the Stamp Act. But in the case of other instruments it has been held that such splitting up is not illegal. In a case reported in Weir, 4th Edition, page 907, where, to avoid the higher duty, a person split up a mortgage for Rs. 1,300 into two mortgages for Rs. 1,000 and Rs. 300, respectively, the Madras High Court said: "There is no provision in the Stamp Act which prohibits the executing of separate instruments and requires the execution of a single instrument in respect of a single transaction." It is a matter for consideration whether the Rs. 500 interval should not be postponed till the Rs. 5,000 limit is reached, and whether between Rs. 1,000 and Rs. 5,000 the intervals should not be fixed at Rs. 200.

Indian rates of stamp duty are modelled on the English rates, but are sometimes higher.

The Indian rates of stamp duty were modelled upon the English rates, but in several cases they are higher than the latter. In introducing the general Stamp Bill which afterwards became the general Stamp Act of 1869, Mr. Cockerell stated in the Imperial Legislative Council on the 28th of October 1868: "The Bill proposes to substitute a scale more in accordance with the English system, but without adopting the English rates, which were unsuited to the circumstances of this country in which the mass of transactions coming under the operation of the Stamp law involve small amounts."* On the 11th of December 1868, he said: "The proposed scale for the equalisation of *ad valorem* stamp duties has been framed as nearly as possible on the model of the English system. Indian rates are doubtless much higher than the rates prevailing in England, but then it must be

* Proceedings of the Council of the Governor-General, 1868, page 487.

recollected that the mass of transactions in this country involve much smaller amounts than general transactions in England, and that the reduction of the Indian to the standard of English rates might result in a very serious sacrifice of revenue which the State could not afford to bear".*

On the 4th of March 1910 the Hon. Mr. Meston said in the Imperial Legislative Council:—"The stamp duties were certainly higher in India than in England and all that we have done is to try to bring the rates into harmony with the general scale".

In England it may be stated generally that the average rate on a bill of exchange 1s. per £100, that on a bond, including a mortgage bond, 2s. 6d. per £100, and that on a conveyance £1 per £100. In other words the percentage is .05 in the case of bills of exchange, .125 in the case of bonds and 1 in the case of conveyances. The stamp duties levied in the United States are as follows:—

Drafts or cheques—2 cents per 100 dollars.
Bonds of indebtedness—5 cents on each 100 dollars of face value.
Conveyances—50 cents when the sale price is between 100 dollars and 500 dollars, and 50 cents for every additional 500 dollars.

The percentage is .02 in the case of bills of exchange, .05 in the case of bonds and 1 in the case of conveyances. In India, the rates according to the Imperial Act work out as follows:—

Bills of exchange, As. 3 per Rs. 100, or .188 per cent; bonds, As. 8 per Rs. 100, or .5 per cent, and conveyances Re. 1 per Rs. 100, or 1 per cent. Thus, the rates on both bills of exchange and bonds are comparatively much higher in this country than in England or the United States. The disproportion has lately become even greater because local legislatures have increased the rates of duty payable upon bonds and conveyances by from 25 to 50 per cent. This comparison seems to suggest the desirability of a substantial reduction of the rates of stamp duty levied in India on documents of indebtedness.

Documents are grouped into three classes for the purpose of determining the scales.

It has been seen that the rates are generally *ad valorem* in the case of records of transactions that are capable of valuation, and fixed in the case of those that are not, and that the *ad valorem* rates are generally roughly proportionate, though in some cases the scale is not continuous. It remains to consider how the actual rate itself is determined. For this purpose the majority of documents are grouped as being capable, for the purposes of stamp duty, of bearing taxation equivalent to that imposed on one of three important documents, viz.,

(i) a bill of exchange not payable on demand, but not more than one year after date or sight [Article 13 (b)]
(ii) a bond (Article 15) and
(iii) a conveyance (Article 23).

The Imperial rates of duty payable on these instruments are roughly—
3 annas per Rs. 100.
8 annas per Rs. 100 and
Re. 1 per Rs. 100.

Most of the instruments referred to in the Act are charged to duty at or with reference to one or other of these rates. For instance, promissory notes payable otherwise than on demand, but not more than a year after date or sight (Article 49), and agreements relating to deposit of title deeds, pawn or pledge (Article 6) are chargeable with the same stamp duty as a bill of exchange, i.e, at 3 annas for Rs. 100. The following instruments are chargeable at the rates fixed for bonds, i.e., at 8 annas per Rs. 100:—administration bond, up to Rs. 1,000; appraisement, up to Rs. 1,000; award, up to Rs. 1,000; bottomry bond; customs bond, up to Rs. 1,000; debenture; further charge without possession if the original mortgage was without possession; indemnity bond, up to Rs. 1,000; lease for a term not exceeding three years; mortgage deed without possession; partition deed; deed of release, up to Rs. 1,000; respondentia bond; security bond, up to Rs. 1,000; settlement; transfer with or without consideration of any interest secured by a bond, mortgage deed or policy of insurance subject to a maximum duty of Rs. 5; trust, subject to a maximum duty of Rs. 15. The rates chargeable on conveyances, i.e., Re. 1 per Rs. 100, are payable on:—certificate of sale, where the purchase money exceeds Rs.25; exchange of property; further charge where possession has been or is given; gift; lease for period exceeding three years; mortgage deed with possession; reconveyance of mortgaged property up to Rs. 1,000; and transfer of lease.

*Proceedings of the Council of the Governor-General, 1868, page 514.

Share warrants to bearer issued under the Indian Companies Act pay duty at 1½ times the duty payable on a conveyance, whereas transfers of shares in an incorporated company or other body corporate pay duty at half the rate.

The stamp law should be consistent in its parts, that is, similar transactions should pay similar rates of duty.

Though the stamp laws do not appear to follow any fixed principle, still it is necessary that the rates of duty imposed by them should so far as possible be consistent. Otherwise it would be found that the duties imposed upon certain classes of transactions were evaded by carrying out the transactions in a manner by which the same result could be attained by payment of less duty. The intention of the law to levy a particular amount of duty in the case of particular transactions can therefore be carried out only by levying the same amount of duty on all transactions of the same kind.

Settlements and gifts.

As an illustration of the way in which stamp duties can be evaded as a result of differences in the rates for similar documents may be mentioned the stamp duties on settlements and gifts. A settlement is defined by the Stamp Act as a *non-testamentary disposition in writing of movable or immovable property* made (a) in consideration of marriage; (b) for the purpose of distributing the property of the settlor among his family, or those for whom he desires to provide, or for the purpose of providing for some person dependent on him; or (c) for any religious or charitable purpose. A gift is not defined by the Stamp Act, but under the Transfer of Property Act, it is a transfer of existing movable or immovable property made voluntarily and without consideration by one person called the donor to another person called the donee, and accepted by or on behalf of the donee. It will be clear that, although the idea of a settlement suggests some legal or moral claim on the part of the person provided for, there must be numerous cases in which it is possible, if there is an advantage in duty to be gained, for a transaction which would normally take the shape of a gift to be evidenced by a deed of settlement. Now the duty on a deed of gift is that payable on a conveyance, namely, one per cent, while that on a deed of settlement (unlike in England where the conveyance rate is charged) is that on a bond, or one-half per cent.

Nor is the facility for evasion the only reason for criticism of such an inequality. Generally speaking, settlements are made by the comparatively wealthy and therefore have an ability to bear taxation which may be assumed to be greater and not less than in the case of transactions executed for consideration.

At the same time the existence of an unduly low rate of duty on transactions of this nature would militate against the success of any measures that might be taken to collect a tax on inheritance or to extend the existing probate duties.

In these circumstances, it seems to be desirable that the duty in both cases should be at the rates applicable to conveyances.

Conveyances and releases operating as conveyances.

A somewhat similar case is found in the difference of stamp duty payable on conveyances and certain kinds of releases which also operate as conveyances. The rate of duty payable on a release deed, i.e., on any instrument whereby a person renounces a claim upon another person or against any specified property is, if the amount or value of the claim does not exceed Rs. 1,000, the same duty as on a bond for such amount or value as is set forth in the release, and in any other case Rs. 5. The result is that various transactions which are in effect transfers of property are carried out as releases on payment of a less duty, as for instance, where a widow surrenders an estate in her possession to the next reversioner, or a Hindu son gives up his share in joint family property in favour of his father by a release deed—*I.L.R., 18 Mad., 223.*

Attestation of documents should not be a test for the assessment of stamp duty

It is now proposed to consider certain cases in which certain arbitrary factors are taken as the test of liability to a higher or a lower duty. Thus, in a few instances, a different duty is chargeable according as a document is attested or not. For instance, section 2 (v) of the Act defines a bond as including *inter alia* any instrument attested by a witness and not payable to order or bearer, whereby the person obliges himself to pay money to another. Article 6 of Schedule I exempts an instrument of pawn or pledge of goods, if unattested, from the duty ordinarily chargeable on an agreement relating to a pawn or pledge. By a notification of the Government of India, Finance Department (Separate Revenue—Stamps), dated 14th February 1918, No. 387F, the Governor-General in Council has remitted the duty chargeable under article 40, Schedule I, on an unattested instrument evidencing an agreement relating to the hypothecation of movable property. Article 17 of Schedule I prescribes the stamp duty on an instrument of cancellation if attested and not otherwise provided for. The reason why attestation is regarded as an important element in fixing the stamp duty seems to be that, where attestation exists, there is a presumption that the document is more formal and less urgent than where attestation does not exist. But as a fact attestation is only intended to furnish evidence of execution, and cannot be regarded as altering the character of a document. There is no reason why there should be a distinction for the purpose of stamp duty merely because a document bears on its face evidence of its having been executed. According to the Negotiable Instruments Act (XXVI of 1891), section 4, illustration (b), an instrument worded as follows would be a promissory note:—"I acknowledge myself to be indebted to B in rupees one thousand to be paid on demand for value received". If, however, attestation of witnesses be added to this instrument, it ceases to be a promissory note for the purposes of the Stamp Act and comes within the description of a bond under section 2 (5) (b)—vide 33 M.L.J., 603, and 29 Bombay, 82. Again an instrument under which the maker undertakes to deliver a certain quantity of grain on demand is an agreement if it is unattested, but a bond if it is attested. The resulting difference in stamp duty is very large. In the case of a promissory note payable on demand the stamp duty is a fixed duty ranging from 1 anna to 4 annas, whereas the stamp duty payable on a bond is *ad valorem* on the amount secured by the bond. So also, while the stamp duty payable on an agreement like the one quoted above would, under the Indian Stamp Act of 1899, be only 8 annas, that on a bond would be *ad valorem* varying with the amount of the bond.

Further, questions have sometimes arisen as to what is meant by attestation. Where the actual writer of a document signed it, the Madras High Court held that it had been attested, while the High Courts of Bombay, Calcutta and Allahabad held that it had not been attested.* The creditor naturally requires the signature of the writer to remind him who the writer was in case he has to file a suit on the document, and it is hard that the debtor should have to pay stamp duty as for a bond instead of the lesser stamp as on a promissory note, simply because he cannot write, or cannot write well enough to prepare the whole document. It seems to be desirable that the distinctions in stamp duty that are based on the fact of documents being attested or unattested should be done away with.

Nor should possession in the case of documents of security.

A somewhat similar distinction made in the Indian Stamp Act is that based on possession in the case of mortgages. In England no distinction is made in the matter of duty between a mortgage with possession and one without possession. In India there is no distinction made between legal and equitable titles and the essence of a mortgage is the furnishing of security for a debt. There is little difference between a mortgagee with possession and a mortgagee without possession who is also a lessee of the mortgaged property.

Similar remarks apply to the case of a document of further charge.

Another similar case is that of mortgages or hypothecations of movable property on the one hand, which under the existing law fall under article 40 and are treated as on a par with mortgages of immovable property, and pawns or pledges of movable property on the other, which fall under article 6 and pay a much lower duty as bills of exchange not payable on demand, but not more than one year after date or sight. Thus, while in the case of documents of security relating to immovable property, possession has the effect of increasing the rate of stamp duty, in the case of similar documents relating to movable property it has exactly the contrary effect.

"Value of the property as set forth in the instrument."

Another test of liability which it is difficult to justify is that which depends on the introduction into certain parts of the Act or schedule of the words "value of the property as set forth in the instrument". For instance, the duty payable on an award, where the amount or value of the property

*10 Mad., 158; 14 Bom., 511; 17 All., 211; 49 Cal., 729.

to which the award relates as set forth in such award does not exceed Rs. 1,000, is the same as that payable on a bond for a similar amount; that on a gift the same as on a conveyance for a consideration equal to the value of the property as set forth in the instrument; and that on an exchange the same as on a conveyance for a consideration equal to the value of "the property of the greatest value" as set forth in the instrument. Similar language is used in the articles relating to Reconveyance of mortgaged property (Article 54), Release (Article 55), Settlement (Article 58) and Trust (Article 64). On the other hand, in Articles 45 and 62, which relate to partition deeds and transfers of shares, respectively, the expression "value of the share" is used without the words "as set forth in the instrument". It would seem to follow from the distinction so made that the parties to instruments of the former class have a discretion to put any value they please on the property referred to in the instrument. In I.L.R., 8 Madras, 453, which was a case of a settlement deed, Turner, C.J. said: "It is obvious that it may often be difficult and sometimes impossible to value the interests created by a settlement, and the legislature has, we imagine, on this ground amended the law by the introduction of the words 'as set forth in the instrument'." He added: "There are provisions which appear sufficient to protect the revenue if we adopt this construction". In I.L.R., 44 Allahabad, 339, which was a case in which a deed of gift did not set forth any value of the property dealt with by it, the Court, while holding that the deed did not require any stamp at all, said "The case seems to us to be strictly analogous to one which would arise if the executant of a deed of gift chose to set a purely nominal value on the property conveyed and to stamp the instrument accordingly. For the purpose of the stamp law, the valuation given in the instrument would have to be accepted . . . . . There is no provision in the law authorizing the Collector to ascertain the value of the property with a view to causing the instrument to be stamped with reference to the value thus ascertained."

Even granting that the setting forth in the instrument of a value different from the true value is an offence punishable under the Stamp Act, it is obvious that, in practice, cases of under-valuation will but rarely come to light. A further important factor is that there is no power to collect the deficient stamp duty or penalty in such cases. In the English Stamp Act, the words "as set forth in the instrument" are not used at all. For instance, a settlement is chargeable with a duty of 5*s*. for every £100 or for any fractional part of £100 "of the amount or value of the property settled or agreed to be settled". Under section 74 of the Finance Act, 1910, a gift is chargeable with a like duty as if it were a conveyance or sale with the substitution "of the value of the property conveyed or transferred for the amount or value of the consideration of the sale". It would seem desirable in this matter to follow the English practice. It may be objected that such action in this country might lead to vexatious enquiries by officers of the Registration department and others into the correctness or otherwise of the values recited in instruments. Any danger of this kind might perhaps be avoided by providing that the value as set forth in the instrument should be accepted as correct unless and until evidence to the contrary was forthcoming.

Cases where consideration is understated.

Where stamp duty is payable on the actual value of the consideration, the device is sometimes adopted, where the consideration for a document is in excess of the maximum amount in the scale for which a particular duty is payable, of writing the document as only for the maximum sum on which the lower duty is payable and paying the excess into the hands of the borrower or purchaser, as the case may be, and thereby evading the excess stamp duty. For instance, suppose a sale deed in respect of a house is for Rs. 1,100. The parties may make out their document on a ten-rupee stamp paper for Rs. 1,000, instead of on a fifteen-rupee stamp paper for Rs. 1,100, and thereby avoid, not only a further stamp duty, but also a further registration fee, the vendor, however, being duly paid the full consideration due to him. Such a contrivance to evade the stamp duty may be an offence, but there is no provision in the Act whereby, even if such an offence is prosecuted to conviction, the deficit stamp duty can be realised. An old English Statute 48, George III, Chapter 149, which was intended to prevent collusion between vendors and purchasers, enacted that, in the event of the full consideration money not being stated in such a conveyance, the purchaser would be entitled to recover as much as he had paid in excess of the declared amount. The old stamp law in this country contained provisions to a like effect in section 51 of Act X of 1862 and section 47 of Act XVIII of 1869. The objection to such a provision is obvious, *viz.*, that, as the purchaser is bound to provide the stamp, he may, if such a provision exists, ultimately benefit by his own fraud. The provision was omitted in the Act of 1879 and now no longer exists either in the English or in the Indian Statute Book. A better course would appear to be to provide that, where an instrument is produced or comes before a judge or a public officer in the performance of his functions and is proved to contain an understatement of the amount on which stamp duty is payable, he may order the payment of the additional duty and refuse to admit the instrument until such duty has been paid, or may impound the document and send it to the Collector for action under section 38 of the Act.

Suggested distinction between documents already required to be in writing and documents which may hereafter be required to be in writing.

In his evidence before the Committee, Sir T. Desikachariar suggested that, in re-adjusting the stamp duties, a distinction should be made between documents evidencing transactions which are under the present law required to be reduced to writing and documents evidencing transactions which may hereafter be required to be so reduced. He pointed out that the Civil Justice Committee had recommended compulsory writing and registration in respect of several transactions which under the existing law do not require such writing or registration, and urged that it would be unjust to engraft a taxation law on any measure of legal reform purely intended to provide for certainty of title and for the substitution of written for oral testimony. To require transactions of this nature to pay stamp duty would be, he said, tantamount to penalising measures for placing evidence of an indubitable kind before the courts. The Civil Justice Committee themselves did not make any such suggestion, although in regard to another matter—the introduction of a compulsory system of probate of wills—they suggested that the levying of court-fees should, if possible, be "accommodated".*

The enactment of a law that documents which are required to be in writing and registered from a particular date should, from the date when they were so required to be in writing and registered, pay a stamp duty less than other documents which are already compulsorily registrable or which are not compulsorily registrable at all, would introduce an element of illogicality into a branch of law which is *positivi juris* and involves no principle. When there is no law compelling a writing, the stamp duty may sometimes be reduced to encourage such writing. But when there is a law compelling a writing, the real criterion should be whether the stamp duty is so heavy as to involve hardship in a substantial number of cases. At the same time the bringing of a number of new documents within the scope of the tax might increase the total receipts in such a way as to make a general reduction of rates possible.

DETAILED CONSIDERATION OF THE SCHEDULE.

The discussion has so far proceeded on general principles, in illustration of which certain examples have been examined. It is now proposed to consider the documents which are dealt with in the schedule to the Act in more detail, and for this purpose, to classify them under the following heads:—

1. Instruments relating to transfers of property.
2. Instruments relating to commercial transactions.
3. Instruments relating to other transactions.

Instruments relating to transfers of property.

Transfers as a result of inheritance.

Administration bonds, deeds of adoption and deeds giving authority to adopt may be regarded as instruments connected with inheritance which have the effect of transferring property. It has already been suggested that deeds of adoption which operate to create title to property should be treated for purposes of duty as if they were conveyances of the property concerned. Documents giving authority to adopt on the other hand, unless

* Report of the Civil Justice Committee, Chapter 38, paragraph 8.

followed by an adoption, transfer no right to any property. A fixed duty is therefore appropriate in this case, and a sum of Rs. 5 would appear to be sufficient except when the instrument shows that there is property involved in the case of a considerable amount, say, Rs. 10,000 or more; in that case a charge of Rs. 10 would be appropriate.

Gifts and settlements.

Deeds of gift and settlements are governed, respectively, by Articles 33 and 58 of Schedule I of the Stamp Act. These have already been discussed above and it has been recommended that the conveyance rates should be made applicable in both cases.

Partitions.

In the case of partition deeds it is desirable in the first place to have a clear understanding as to what is included in the term. In I.L.R., 7 Mad., 385, it was held that mere lists of shares drawn up at a partition without any words operating as a release of joint interests and the creation of separate interests do not require any stamp under Article 45. Certain decisions in Bombay seem to throw a doubt on this position. But in the Presidency of Madras it seems to be the case that payment of stamp duty on partition deeds is frequently avoided by drawing up the instrument of partition in the form of lists of shares allotted to the various co-parceners or co-sharers. It would seem desirable that the definition should be amended so as to prevent this practice.

As regards the rate of duty, Article 45 renders a deed of partition liable to the same duty as a bond for the amount of the value of the separate share or shares of the property. For reasons given in discussing the general principles underlying the rates of duty, the appropriate duty would appear to be rather that on an exchange or a conveyance.

A further criticism arises out of proviso 2 to the article, under which temporarily settled lands dealt with in a partition are valued at a multiple of the assessment. This idea is presumably borrowed from the similar practice in the matter of suit valuation, but the cases are different. In the case of the assessment of court-fees, there may be some justification for it in the avoidance of unnecessary contest; but there is none such in the case of assessing the stamp duty on documents relating to partition, where the properties may be presumed to be divided with reference to their actual value and not (in the case of one class of property) to a purely arbitrary value. This logical aspect of the provision is emphasised when encumbrances have to be deducted, which may amount to more than the arbitrary value of the property encumbered. The proper course to follow appears to be that adopted in the case of documents relating to conveyance or sale, in which lands are valued according to their market value.

A more doubtful point arises out of section 2 (15) of the Act, under which an instrument of partition has been defined as including a final order for effecting a partition passed . . . by any civil court. The result is that the final decree for partition of a civil court has now to be stamped with an *ad valorem* fee as on a partition deed, and until the decree is so stamped, it is not operative (I.L.R., 32 Calcutta, 483). Now, in a suit for partition, the plaintiff has to pay a court-fee which, though different in different provinces (owing mainly to doubt as to the provision of the Court-fees Act which is applicable), is still a substantial amount. It seems to be open to question therefore whether the levy of a stamp duty on the act of a court for which the party has already paid in the form of court-fees is appropriate. Moreover, it may be urged that a decree of court cannot be regarded as a transaction between parties and taxed as such, and that in the similar case of decrees for dissolution of partnership a stamp is not required to be affixed to the decree on the scale prescribed for instruments of dissolution. The apparent inequity is aggravated by the absence of any provision for the refund of the stamp duty paid on a final decree for partition in cases in which the decree is subsequently modified or reversed on appeal.

Sale certificates.

A certificate of sale granted to the purchaser of any property sold by public auction by a civil court is now liable to pay stamp duty at the conveyance rate in every case in which the purchase money exceeds Rs. 25. When it is less than Rs. 25, the rates are annas 2 up to Rs. 10 and annas 4 up to Rs. 25. In respect of every sale held by a court a poundage fee is collected, which amounts to very much more than the stamp duty payable under the Stamp Act. It seems unjustifiable in respect of one and the same transaction to levy the stamp duty as well as a substantial poundage fee. In connection with partition deeds, it has been suggested that the duty now levied upon a final decree for partition, which is an act of the court and not a transaction between private parties *inter se*, may be dispensed with. For similar reasons, certificates of sale might be issued by courts without the interposition of any further charge.

Conveyances.

Under the head of conveyances the only point that here calls for attention is that, unlike the case of bonds or certificates of sale, there is no provision for any rate less than the 8 annas due on a conveyance for Rs. 50. It seems desirable to have a 4-anna rate for conveyances for sums of Rs. 25 or less.

Reconveyances of mortgaged property.

A reconveyance of mortgaged property falls under Article 54, under which the duty payable is *ad valorem* as on a conveyance where the amount of the mortgage debt does not exceed Rs. 1,000, and Rs. 10 in any other case. An instrument of this nature is resorted to when a mortgage has been effected in the English form, that is, where the mortgagor binds himself to repay the mortgage money on a certain date and transfers the mortgaged property absolutely to the mortgagee, but subject to the proviso that he will retransfer it to the mortgagor upon payment of the mortgage money as agreed. In England, the rate of duty chargeable on a reconveyance is only 6*d*. for every £100, and in effect a reconveyance of mortgaged property is nothing more than an incident of the discharge of the mortgage. It would appear therefore that the duty on instruments of this class might equitably be reduced to one-fourth or even one-eighth of the duty payable on a conveyance.

Releases.

Article 55, Schedule I, relates to a release (not being a release or discharge of an instrument depositing marketable security) whereby a person renounces a claim upon another person or against specified property. The duty fixed on such a document is *ad valorem* as on a bond, subject to a maximum of Rs. 5. Now, a release may enure differently in different circumstances—

(i) It may enlarge or extinguish an estate, as where the owner of a reversion releases his right in favour of a tenant in possession, or *vice versa;*

(ii) It may pass an estate, as where a co-parcener releases his interest in favour of others;

(iii) It may be a mere disclaimer, as where a *benamidar* executes a document disclaiming any interest in the properties nominally standing in his name;

(iv) It may operate as a discharge given by a creditor in favour of his debtor, and so on.

What is now done is for the party executing the deed of release to value the claim released at his discretion and pay stamp duty on such value.

Sometimes real conveyances may be brought under this article under the outward semblance of releases of *benami* rights.

The best course appears to be to adopt the English law and charge a release which operates as a conveyance of any right or claim at conveyance rates on the amount or value of the right or claim released, and other releases, inclusive of releases of rights or claims having no ascertainable value, at a fixed rate, say, Rs. 5.

Bail bonds.

Article 6, Schedule II of the Court-fees Act, makes a bail bond or other instrument of obligation given in pursuance of an order of court or magistrate liable to a court-fee of annas 8, and Article 15 of the schedule to the Stamp Act exempts such an instrument from further duty as a bond. Difficulties have arisen in some cases as to which of these provisions is applicable. In 43 Madras, 362, a security bond executed by a Receiver in favour of a court was held to fall under both the Court-fees Act and the Stamp Act, whereas in a case reported in 21, Calcutta Weekly Notes, 1150, a similar document was held to fall only under the Court-fees Act. In both the Madras and the Calcutta High Courts, under the Civil Procedure Code, a bond by a surety to whom an amin had entrusted attached chattels, for production of the same when called for, was held to fall under the Court-fees Act and not under the Stamp Act: I.L.R. 37 Mad., 17; 49 Cal., 977. It would be well when a suitable opportunity arises to have the doubts arising out of these decisions set at rest.

Transfers of bonds and mortgages.

Article 62 of the schedule relates to the transfer of shares and debentures or of any interest secured by a bond, mortgage bond, or policy of insurance. So far as it relates to the duty payable on a transfer of shares and debentures, the Article will be considered later.

As regards the transfer of an interest secured by a bond or mortgage deed the Article prescribes on an *instrument relating to such transfer*, if the duty *on such* bond or mortgage deed does not exceed Rs. 5, the same duty as that with which the bond or mortgage deed is chargeable. This *prima facie* disregards the case in which the amount due has been partly liquidated so that the value of the interest transferred may be much less than the original value. That criticism is met in a measure in the limitation of the duty to a maximum of Rs. 5, but even within that limit there may be cases of hardship.

Similarly, if a debt secured by more than one instrument is transferred by means of a single instrument, the transfer deed is required to bear a stamp of a value equal to the sum of the duties with which such instruments are severally chargeable, and not of a value equal to the duty upon the aggregate amount secured by all the original instruments put together.

On the other hand, the assignment of a debt not falling under Article 62 requires to be stamped on a conveyance. There does not seem to be any good reason for subjecting documents of this class to double the duty chargeable on those covered by Article 62.

Instruments relating to commercial transactions.

In dealing with documents relating to commercial transactions, it is proposed to omit those dealing with transactions on the stock or produce exchanges, which require special treatment. Types of the principal classes of documents remaining are, agreements relating to deposit of title deeds, pawns or pledges, appraisements, articles of association of companies, bills of exchange and promissory notes, cheques, and hypothecations of movable properties.

Hypothecations of movable property.

A distinction is drawn in the present law between an instrument of pawn or pledge, under which possession is given to the creditor, and a hypothecation of movable property, under which possession is not given. Documents of the former class are liable (subject to an exemption in the case of unattested documents) according to the terms fixed for repayment, to one or other of the rates of duty fixed for bills of exchange under Article 13 (b). Under the Act of 1899 hypothecations of movable property in respect of which possession was not given were liable to duty at the same rate. The Select Committee on the Bill which became Act XV of 1904 expressly excluded them from Article 6 for the purpose of "making it clear that all transactions by which movable property was simply appropriated by way of security for the discharge of a debt or engagement without parting with its possession were outside the scope of the Article and consequently were liable to the duty on mortgage deeds as being instruments whereby one person transferred or created to or in favour of another a right over or in respect of specified property". This enhancement of the duty on hypothecations without possession led to a protest by the mercantile community against the check imposed on the development of cash credits and a notification was issued in 1905 reducing the duty to that payable under Article 6 on a pawn or pledge. Act VI of 1910 raised the duty on a bill of exchange, and in consequence the duty on a hypothecation of movables was increased with it. A further representation ensued with the result that an exemption was given in the case of all hypothecations of movable property if the instrument of hypothecation is unattested. As a consequence, the final state of the law is as follows:—

(i) instruments of pawn or pledge of goods, if unattested, are exempt under the exemption contained in Article 6;

(ii) Instruments of hypothecation of movable property, if unattested, are also exempt under the notification of the Government of India, Finance Department, dated 14th February 1918;

(iii) All other instruments of pawn or pledge are liable under Article 6;

(iv) All other hypothecations of movable property are liable under Article 40.

This state of the law cannot be regarded as very satisfactory. In the first place, as has already been seen, it is difficult to justify the making of attestation a test for the charge of duty. This is especially so where commercial transactions are concerned. Trading companies borrow large sums of money from banks on the security of goods. No specific property is mortgaged, but the whole of the stock of goods of the company is subjected to the charge, creating what is technically known as a floating charge. Deeds creating such charges are generally unattested. Under the existing law, they pay no stamp duty. In England, such mortgages pay stamp duty on an *ad valorem* scale, and there is no reason why in India they should be exempt merely on the ground that they are unattested.

Secondly, if any exemption is to be given at all, it should be in favour of pawns and hypothecations for small debts. At present, while even small pawns and pledges have to pay a duty, if attested, mercantile transactions for considerable values are exempt, if unattested.

Again, if bills of exchange, promissory notes and other similar documents can pay stamp duty without the conduct of mercantile transactions being affected, it is difficult to understand why the payment of a small duty on transactions of cash credit should retard their development. It is true that there are objections to the levy of duty at the rates fixed for mortgages. Thus, for instance, the estimation by the borrower of the maximum sum which he is likely to require during the period for which the agreement is to remain in force, may largely exceed his actual requirements, in which case he may have to pay stamp duty on a larger sum than he ever had the use of. Again, agreements made are often periodically renewed, and the effect of enforcement of the provisions of the existing Act would be the repeated levy of a comparatively heavy charge.

These arguments, however, are not arguments in favour of total exemption. What appears to be desirable is to limit the exemptions to pawns and hypothecations in which small amounts are involved, and to include all the rest, whether attested or not, under the scales of duty provided in Article 6.

Bills of exchange.

Item 13 relates to bills of exchange, which are divided into three categories, (a) where payable on demand, (b) where payable otherwise than on demand, but not more than one year after date or sight, and (c) where payable at more than one year after date or sight. In the first case, the duty payable is one anna. In the second case, it is *ad valorem* rising at various intervals at an average rate of three annas per Rs. 100. On the third class of bills of exchange the duty payable is the same as that on a bond, which will be referred to later. In England, there is no distinction between bills of exchange payable not more than one year after date or sight and those payable at more than one year after date or sight, and all bills of exchange, when not payable on demand, at sight or on presentation or within three days thereafter, are liable to a stamp duty which is proportioned at the rate of 1 shilling per £100. The Indian rate is more than three times the English rate as regards bills payable otherwise than on demand but within one year, while in the case of bills payable thereafter the duty is considerably greater.

Bonds.

In the case of bonds covered by item No. 15 the stamp duty payable in India is at the rate of 8 annas, and in some provinces even more, per Rs. 100, while in England the rate is only 2*s.* 6*d.* for £100. The Indian rate is thus at least four times that obtaining in England. As bond rates are applicable in both countries to mortgages, debentures and various other documents, it will be clear that a large number of instruments relating to borrowing pay a very much higher duty in India than in England. As the bond rates in India are considerably greater than those payable on promissory notes, bonds are not so popular as promissory notes. Even in cases where a bond would be a more appropriate vehicle for expressing the intentions of parties, they enter into promissory notes payable on demand and either reduce the other terms of the contract between them to a separate writing or rely on oral credit. The great banking class of Nattukkottai Chetties, for instance, carry on their money-lending business mostly through documents which are in the form of promissory notes payable on demand. But it is a well-known fact that these promissory notes do not in most cases represent the real contracts between them and their debtors. For instance, the real agreement between the parties is generally to the effect that the repayment of the loan should be made in instalments spread over a certain period, that if the instalments are paid regularly, the rate of interest should be less than what is entered in the note, and that it is only in default of regular payments that the terms appearing on the face of the note, viz., payment on demand at the rate recited, should be enforced.

Again, sometimes one or more executors of the document are merely sureties for the rest. These terms are, however, not reduced to writing, partly because it is believed that they would render the documents liable to the bond rates of duty, and partly because the creditors generally prefer the more easily enforceable form of a negotiable instrument. In so far as the rate of duty is responsible for the fact that documents are drawn up in terms widely differing from the actual contract between the parties, the fact is one to be regretted.

Deeds of partnership.

Article 46 relates to instruments of partnership and dissolution of partnership. Under it, an instrument of partnership has to pay a duty of Rs. 2½ where the capital of the partnership does not exceed Rs. 500, and a duty of Rs. 10 in any other case. A further scheme of graduation seems to be desirable. For instance, a Rs. 5 rate might be introduced for the case where the capital is from Rs. 500 to Rs. 1,000. It is also for consideration whether, in the larger cases, a graduated duty similar to that suggested in the case of the articles of association of companies would not be appropriate. The case appears to be one in which there is *prima facie* evidence of ability to pay, and a conspiracy to avoid the duty might result in the creation of evidence as to the shares of the partners which would be very damaging to their interests later.

Receipts.

The last item to be considered is No. 53, Receipt. The tax on receipts or acquittances for money was introduced in England in 1795. Prior to 1833 all receipts for sums between £2, at which point the tax commenced, and £5 were charged with a duty of 2*d.*, but in that year receipts for sums below £5 were exempted from the duty, which thereafter stood at 3*d.* on sums between £10 and £20, after which it increased to a maximum of 10*d.* In 1853 a penny was fixed as the duty on receipts in the place of the varying rates, and ordinary stamps were permitted to be used. The rate was raised to 2*d.* in 1920. In India duties on receipts were first introduced by Bengal Regulation VII of 1800, which charged them with the same *ad valorem* duties, ranging from 4 annas to Re. 1, as were payable on bonds, promissory notes and other written obligations. Sums not exceeding Rs. 50 were exempt. Under Bengal Regulation I of 1814 the rates ranged from one anna, on sums of Rs. 16 and less, up to Rs. 150 on sums exceeding a lakh of rupees. Under Bengal Regulation XVI of 1824 the duties were reduced throughout the scale to a minimum of one anna for sums up to Rs. 32, and a maximum of Rs. 4 for sums of Rs. 8,000 and above. It is unnecessary to refer to the history of the rates in the other provinces. Act XXXVI of 1860, which was the first general Stamp Law for all India, had two rates, half an anna on sums between Rs. 10 and Rs. 50, and one anna on sums above Rs. 50. The Act of 1862 fixed a uniform rate of one anna on all sums exceeding Rs. 20, and Act XVIII of 1869 maintained this rate. When the latter Act was under consideration the question of lowering the exempted minimum to Rs. 10 seems to have been considered, but in consequence of the introduction of the license tax, which fell exclusively on the trading interest, this proposal was given up. There is no doubt as to the lesson which history teaches in respect of the unwisdom of high or numerous rates. It is possible that in present conditions a reduction of the minimum to Rs. 10, and the adoption of a rate of 2 annas in the case of sums over, say, Rs. 100, might give an increased yield, but the matter is one affecting such a large part of the community that change in respect of it is to be avoided, if possible.

Instruments relating to other transactions.

Certified copies.

The two former heads have practically exhausted the schedule, and there is little residue. The most important case is that of the charge for a certified copy, which is 8 annas where the original was chargeable with a duty of Re. 1 or less, and Re. 1 in other cases. The charges levied in connection with the copying of documents are all in the main payments for services rendered, and it is desirable to distinguish what these are. In the first place, in some offices, e.g., those of the Registration Department, there is a charge for searching for the document of which the copy is required. Then there is a charge, which in some provinces is taken in stamps, for the actual work of copying. Following this, comes the charge now in question for examining the copy so made and certifying it to be correct. Lastly there may be a charge under the Court-fees Act attendant on the production of the copy in a court of law. There is a tendency in some quarters to confuse these charges and to recommend that the item now in question should be abolished on the ground that it represents payment for a service which is covered by one of the other payments. While it is clear that this is not strictly correct, it is evident from the catalogue given above that the process of proving a document in court is apt to be very expensive; at the same time it would appear that the charge belongs properly rather to the category of fees than to that of stamp duties.

Extracts from registers of births, deaths and marriages.

An exception from this conclusion may be made, however, in respect of one class of documents which are at present included in the general category of copies, namely, extracts from registers of births, deaths or marriages. These are documents of quite a special class which it seems desirable to distinguish from copies of documents required as a rule for court proceedings. At present they are mentioned only to be exempted. In England they pay a duty of one penny. They might well pay a similar duty in India.

TRANSACTIONS ON THE STOCK AND PRODUCE EXCHANGES.

The documents in use.

It has already been proposed to give separate treatment to the important class of documents which relate to the purchase and sale of stocks and shares and other marketable securities. Transactions of this kind are usually effected through a broker on the Stock Exchange, and where this is the case, two kinds of documents should ordinarily come into being—

(1) a contract note, which is defined as a note or memorandum sent by a broker or agent intimating the purchase or sale on account of a principal of any stock or marketable security, and

(2) a conveyance or transfer of the stock or marketable security.

The first of these documents is chargeable under Article 43 of the First Schedule of the Indian Stamp Act with the duty of one anna for every Rs. 10,000 or part thereof of the value of the stock or security, and the second under Article 62 with one-half the duty on a conveyance for a consideration equal to the value of the share or the face value of the marketable security, as the case may be.

The contract note—Difference between English and Indian practice.

In the first case, that of the contract note, there are two important differences between the law in England and that in India. In the first place, the passing of a contract note is compulsory in England, but not in India. In the second, while in England the persons dealing on the Stock Exchange are divided into brokers and jobbers, and the contract notes entered into by both classes are equally liable to duty, in India the same person may transact business indifferently as broker or jobber, but while a contract note drawn up by him in the one capacity is dutiable, one drawn up in the other is not.

For these and other reasons, the stamp duty payable on the contract note in India seems to be generally ignored, and the Bombay Stock Exchange Enquiry Committee, 1923, recommended that in the contract note it should be stated that stamp duty is payable and that a space should definitely be marked for adhesive stamps. They also considered that the stamping of contract notes would be greatly facilitated if arrangements were made for the sale of stamps within the Stock Exchange.

Suggested adoption of the English practice.

In England, the stamp on the contract note is a special adhesive stamp affixed to the contract note, which is kept in foil and counterfoil. The stamp duty on the note is allowed to be added to the charge for brokerage or agency and recovered as part of such charge. In these circumstances, the duty is seldom evaded.

In India also the passing of a contract note should, if possible, be made compulsory, and it should be required when the broker is acting as a principal just as much as when he is acting as an agent. The note should be in a prescribed form, which might be printed by the Government, with a minimum stamp embossed thereon and a space left for the addition of further adhesive stamps, which should be of a special nature. If these suggestions were adopted, evasions of the stamp duty on the contract note might be expected to become considerably less than at present.

The loss of revenue through transfers in blank.

In the case of the second document, namely, that by which the transfer of the stock or marketable security is effected, there is a far more serious loss of duty resulting from the practice of transferring in blank. The meaning of this phrase is that at the beginning of a series of transactions, the transferor will sign a transfer, but without entering the name of any transferee. The document may then pass through a large number of hands without further entry, the filling up of the blank being postponed until an ultimate purchaser who is a permanent investor desires to have the stock or security registered in his name.

Before examining the history of the attempts to put a stop to this practice, it may be of interest to summarise its precise effect as explained by Lord Wrenbury in "The Law and Practice under the Companies Acts". Where, as in companies subject to the Companies Clauses Act, transfers are required to be made by a deed, a transfer in blank, that is to say, a transfer signed by the transferor leaving a blank for the name of the transferee is void at law and as a deed is in effect wholly inoperative. But as an agreement constituting in equity a transfer of the ownership, it will give a right, subject to any superior equity, to call for a legal transfer. Where the articles of association do not require a deed, but permit transfers to be made simply by an instrument in writing, a transfer in blank carries to the person whose name is subsequently filled in as transferee, not only the equitable, but also the legal interest, meaning, it is conceived, the legal right to call upon the company to register the transfer, for there is no legal title to the shares until registration, or at any rate until all necessary conditions have been fulfilled to give the transferee as between himself and the company a present, absolute and unconditional right to have the transfer registered. In some cases, the articles of association of a company may require the transfer to be executed by both the transferor and the transferee. In such a case, a transfer executed by the transferor alone may not be sufficient to pass the legal title. Apart from this, however, there is no general legal principle that a transferee cannot be a shareholder unless he has signed the transfer. The law may be said to be much the same in India also.

Previous attempts to deal with the matter.

To come now to the history of the attempts to deal with the matter. It will not be necessary to go back to an earlier date than 1878 when Mr. Cockerell, in presenting the report of the Select Committee on the Stamp Bill of that year, said:

"The Board of Revenue of the Lower Provinces had again pressed their former proposal to compel the payment of stamp duty on intermediate transfers of shares. The Committee had been unable to adopt the suggestion of the Board, for the simple reason that there was no way by which the duty could be levied in such cases; for the transactions were not reduced to writing further than that a signature upon a blank deed was taken; but the whole conditions of the transfer and the obligations of the parties under it were matters of oral or *parole contract*; hence the document could not operate as a conveyance or be produced in court as evidence, and there seemed consequently to be no ground for subjecting it to duty, even if any feasible mode of compelling the payment of the duty could be devised."

The matter rested where it was until the general revision of the Stamp Act in 1898, when Sir James Westland referred to it again in the following terms:—

"Some objections are made to this kind of transfer, but they are objections which lie outside the purview of the Stamp Act. In the first place, companies make objection to the practice on the ground that, if the certificate of the shares is in this manner passing from hand to hand, they do not know who their shareholders are, and they therefore desire that this practice of transfer by blank transfer deeds should cease, and that we should impose a limit of time upon such deeds and compel a transfer deed to be executed within a certain time and the transfer to be thus completed. Some persons have raised questions of revenue with regard to this, and pointed out that it would be desirable, even in the interests of the revenue, to reduce the duty upon a transfer deed, but to limit its operation in point of time, so that it might cover, not a dozen or even 50 or 100 transfers, but only cover one. The practice, however, of transfer by blank transfer deed is a common one both in England and in this country, and it does not seem to us possible as a matter of regulation of stamp duty to interfere with it. We have therefore not made any alteration in the levy of duty upon this class of document."*

*Proceedings of the Council of the Governor-General, 1898, pages 446-447.

The question came up again in connection with the Stamp Amendment Bill No. 4 of 1910, which *inter alia* doubled the then existing rates on transfers of shares or debentures and raised the duty on contract notes. In presenting the report of the Select Committee on that Bill on 4th March 1910, the Hon'ble Mr. Meston said:—

"I turn now to the particular transaction which I referred to at some length in introducing the Bill—the transfer of securities between parties who have no intention of becoming permanent holders and who treat the securities as articles of currency or as material of credit or as matter for pure speculation. It is the practice in the Calcutta market at least for very heavy transactions of this character to pass without any formal transfer deed at all. What is known as a blank transfer is drawn up. It is signed and generally stamped by the first *bona fide* seller; but after that it may be the vehicle for dozens of transfers without paying any further duty. When, after changing hands over and over again, the security covered by the blank transfer finally finds a resting place in the hands of the permanent investor, the transfer deed is completed; but for all the intermediate transactions the Government revenues have received nothing. It has always been recognised that the arrangement is unfair to the general public, and the question of insisting upon regular transfer deeds has frequently been discussed. On the present occasion, however, there was no intention of attempting any such radical reform. All that Government desired was to secure some revenue from operations which may reasonably be asked to pay a contribution to the Exchequer. It was decided accordingly to be satisfied with a moderate impost upon the contract notes which change hands when a transfer of this description is carried through".

The matter was considered in 1924 by the Bombay Stock Exchange Committee, and in 1925 the Bombay Government suggested legislation to abolish the system of blank transfers, but the Government of India replied that it was impracticable to legislate in order to render them void altogether or void unless completed within a definite period after the original contract. While expressing their sympathy with the object in view, the Government of India considered that reform in this respect could only be introduced by the salutary influence of the Stock Exchanges themselves. A step in that direction has been recently made by the passing of the Securities Contracts Control Bill by the Bombay Legislative Council, and it is to be hoped that there are other steps to follow. The matter may therefore be examined from that point of view.

It is not practicable to proceed without the assistance of the Stock Exchanges.

Before doing so, however, it may be desirable to explain, as briefly as possible, why it is not practicable to proceed without the assistance of the Stock Exchanges. In the first place, the members of these institutions are governed by their own by-laws as well as by the law of the land, and if the former rendered valid a document declared by the latter to be invalid, the effect of the latter declaration might be nothing at all. An illustration of this is afforded by the Sale and Purchase of Bank Shares Act—30 Victoria, Chapter 29 (Leeman's Act, 1867). The object of the Act was to prevent speculative dealing in the shares of Joint Stock banking companies. It declared all contracts for the sale or transfer of shares or stock in any Joint Stock banking company in the United Kingdom of Great Britain and Ireland to be void unless the numbers by which such shares or stock were distinguished were set forth in the contract. To comply with this provision was not to the advantage of the Stock Exchange, and accordingly, by the rules and usages of the Stock Exchange, a contract which under the Act is null and void to all intents, is treated as valid and binding and enforced as between members of the Exchange by its own rules and practice.

Another remedy suggested is to prohibit the payment of dividends except to the registered holders of shares or securities. Disabilities of this kind are already in force, but to little effect. For instance, under Section 33 of the Indian Companies Act, no notice of any trust, expressed, implied or constructive, shall be entered on the register or be receivable by the Registrar. At the same time, the seller under a blank transfer, if he received the dividend from the company, would be regarded as having received the sum as trustee for his transferee, and in fact a law to the effect that dividends should be payable only to registered holders would only be confirming what is already the general practice with many companies. But while the companies object to the practice of transfers in blank as much as the Government, this has had no effect in the direction of its discontinuance.

Lastly it will be obvious that the drastic remedy of rendering the transfer void might in many cases penalise the perfectly innocent purchaser.

The possibility of effecting reform in conjunction with the Stock Exchanges.

It remains to consider the possibility of effecting reform in conjunction with the Stock Exchanges, and here it may be remarked in the first place that it must not be understood from the quotation given from Sir James Westland above that there exists in England any practice comparable to that which is now under discussion. The practice in the two countries is similar up to a point, that is, in so far as a large number of transactions in shares generally (possibly exceeding the total number existing in the case of particular companies) may take place in the course of speculation before any particular bargain is closed by a transfer. But in England there are two things which prevent this condition of affairs being accompanied by the evil of blank transfers, the first, that all speculative transactions have to be brought to a close by a specific transfer of shares periodically on what are known as settlement days, the second, that under the by-laws of the English Stock Exchange a blank transfer is bad delivery.

The question is how to secure the introduction of a similar system in India. The first point is to secure the co-operation of the Stock Exchanges. And the first step in this direction is to secure them against competition by outsiders who are free from the trammels which they may agree to impose on their own members. The manner in which this can be done is by the grant of a charter such as was granted to the East India Cotton Association under the Bombay Cotton Contracts Act, 1922. This done, it might be practicable to arrange with the authorities of the chartered exchange for the framing, among others, of rules making a blank transfer bad delivery and providing for periodical settlements which could be closed only by formal transfers. At the same time machinery might be established for the sale or embossing of contract note and transfer stamps in the exchange and for the maintenance of a record connecting the one set of transactions with the other until cleared by a transfer. Actually for the time being no charter has yet been granted to any Stock Exchange, but the Securities Contracts Control Act recently passed in Bombay enables a recognised Stock Exchange, subject to the sanction of the Local Government, to make rules *inter alia* for the making, settling and closing of bargains and for the regulation of all dealings by members on their own account. It is to be hoped that this is only the first step on the road to reform, and that it will shortly be followed in the acceptance of a charter and by the framing of further rules on the lines indicated above.

If this can be done, the duty on transfers may be reduced.

Meanwhile, it has been suggested that the system of blank transfers is itself the result of the heavy tax imposed on the transfer of shares, and that on this account shares are left standing in the name of a former holder even after he has assigned away his proprietary right therein. Accordingly, the suggestion has been made that, if the duty on the transfer of shares were reduced, there would no longer be any excuse for evading the transfer stamp, and that the stamp duty realised on completed transfers would double itself as a result of the reduction. This is a suggestion which derives some support from the fact that one of the reasons given for increasing the rate of duty in 1910 was the fact that only a small percentage of transactions paid it. It seems desirable therefore that, if and when the Stock Exchanges arrange for settling days and the payment of duty at these fixed intervals, the question of the reduction of the duty should simultaneously be taken up. With it should be considered the proposal of the Atlay Committee that concessions should be made in certain cases as where a purchaser takes in his own name shares which he had previously pledged.

If not, that on contract notes should be raised.

Until some satisfactory way has been discovered of dealing with the problem of blank transfers, the most promising method of levying a toll on Stock Exchange transactions seems to be through the medium of the contract note. The duty, which is now at the rate of one anna for every Rs. 10,000, might be raised to four annas for every Rs. 10,000, subject to a maximum of Rs. 40.

The deposit of shares as security.

A further difficulty that has been raised is as regards the deposit of shares as security for loans. The usual course is to deposit the documents of title accompanied by an agreement such as is contemplated by Section 23-A of the Indian Stamp Act, 1899. There is reason to believe that this course is pursued owing to the heavy duty which would be exigible if an actual transfer of the securities was executed. The duty on such transfers would be that payable under Article 62 of the Act. In England the duty on such a transfer is a fixed duty of 10s and it would be advantageous if in India also the duty were made subject to a maximum of Rs. 10.

To summarise:

Summary of proposals.

It is desirable to adopt the principle of the English law that a contract note is necessary when the broker is acting as principal, just as much as when he is acting as agent.

The passing of a contract note should, if poss'ble, be made compulsory in all instances. For this purpose it may be required that the note should be in writing and in a prescribed form.

Forms of contract note with a minimum stamp embossed on them should be pr'nted by Government and space should be left for the addition of further adhesive stamps, which should be of a special nature.

While it is not practicable under present conditions to put a stop to the evils of blank transfers, it would be practicable to effect a large reduction with the co-operation of the authorities of the exchanges.

The basis of the arrangement would be that the Government should by means of a charter give to the members of the exchange a monopoly of the right of doing business of a particular class, and the authorities of the exchange in return would see that the business was conducted in such a manner as would facil'tate the collecting of the Government revenue.

Such an arrangement might involve the filing of counterparts of contract notes with the secretary of the exchange, and periodical settlements, or the carrying through of a transfer within a fixed period after the date of the first contract note relating to particular shares.

To facilitate the work, arrangements should be made for the sale of forms of contract note and transfer deed and Stock Exchange stamps and for the embossing of stamps on transfers at the exchanges.

It is also most desirable that the rules of the Exchanges should make a blank transfer bad delivery.

If these arrangements were carried out, the rates of duty might be reduced.

A concession might also be made in certain cases as when a purchaser takes in his own name shares he has previously pledged.

When shares are deposited on security for a loan accompanied by a blank transfer, the duty should be limited to a maximum of Rs. 10.

Pending any such arrangement with the authorities of the exchanges, contract notes should be insisted upon and the rate of duty raised. A similar increase might be made in the duty on agreements for the sale of securities.

The Produce Exchanges.

So far, Stock Exchanges have been dealt with. There are also a number of Produce Exchanges in India, of which the most important is the Cotton Exchange in Bombay. There too, two documents may pass, called the contract note and the delivery note, and governed respectively by Art'c'e 43 (*a*) and Article 28 of the Indian Stamp Act. The contract note is, however, generally dispensed with, the agreement being recorded in the books of the parties, and though it would be fair to tax the contract by making contract notes compulsory, oppos'tion on the part of the persons engaged in the trade is generally to be anticipated on the ground that, if the exchange of contract notes were made compulsory, they would have to maintain additional staff. As regards delivery notes also, it is doubtful if there is the same case for tax'ng sales of goods as there is in the case of transfers of shares. Delivery notes are not now liable to a stamp duty in England.

Proposals made for dealing with wagering transactions.

In the case of the Produce Exchanges there are two kinds of deal'ngs, legitimate forward dealings by people who wish to secure produce for their business and the gambl'ng in what are known as the *katcha kandi* or *teji mandi* in Bombay and as *baras* in Calcutta. The difference between the two forms, as explained by the Judicial Committee in the case reported in I.L.R. 1901, 29 Calcutta, page 461, is this: "Two parties may enter into a formal contract for the sale and purchase of goods at a g'ven price and for their delivery at a given time. But if the circumstances are such as to warrant the legal inference that they never intended any actual transfer of goods

at all, but only to pay or receive money between one another according as the market price of the goods should vary from the contract price at the given time, this is not a commercial transaction, but a wager on the rise or fall of the market". The temptation to work on the price in the interval by conspiracies among dealers or by circulation of false news is only too evident. It is generally reckoned that gambling speculation greatly preponderates over mercantile speculation in the exchanges. Legitimate speculation in futures may not be objectionable and may even be beneficial since it exercises a moderating influence over pr.ces and distributes the risks. By 'hedging sales' traders are able to secure themselves against loss. But the evils of speculative gambling have so far been recognised by economists and statesmen that means have constantly been sought to put an end to them by legislation, though it must be frankly confessed that no very promising remedies have been suggested. Speculative gambling is not confined to the Produce Exchanges, but is quite common in the Stock Exchanges also. Any attempt to prevent it by a prohibition of all buying and selling for future delivery would put an end not only to the evils, but also to the benefits arising from such business. In most countries, the proposals that have been made look to improvement through the revision and enforcement of the rules made by the exchanges themselves. In Germany a more drastic remedy appears to have been tried, in respect of stock dealings, by the requirement of publicity through enrolment of names and transactions on a register open to inspection, and in respect of bargains in grain and flour by a total prohibit'on of all time bargains, but the laws appear to have been no sooner passed than they were set at defiance. In the Province of Quebec, there seems to exist a law whereby the parties or intermediaries to contracts for buying or selling securities without the intention of real acquisition or delivery are liable to five years' imprisonment; the habitual frequenting of places where such misdemeanours are committed renders a man liable to one year's imprisonment and the holders of such places fall under the law dealing with those who keep gambling houses.*

Control through the auth rities of the exchanges is again the only satisfactory course.

So far as the Cotton Produce Exchange is concerned, the Government of Bombay have dealt with the matter by enacting the Bombay Cotton Contracts Act, 1922, which virtually granted a charter to the East India Cotton Association and enabled it to frame rules approved by the Government for regulating transactions in the cotton market. It cannot be denied that the system of charters and l'censes is open to the objection that it acts as a restraint upon the freedom of a citizen to enter into any legitimate business he deems fit; but it seems to be the only way of securing proper control and taxation of Produce Exchange transactions. In Bengal a private member has obtained leave to introduce a Wagering Associations Bill, which provides that every *bara*, or Produce Exchange, shall be registered under the Indian Companies Act and a copy of its articles of association lodged with the Local Government; that in respect of every transaction there shall be a written contract in a form to be lodged with the Local Government; that the contract shall confer on each party to it the r'ght to offer or to demand the delivery of the goods, in a manner recognised by the trade; that in respect of each class of goods, there shall be fixed a minimum quantity appl'cable to each transaction; and that any exchange that does not comply with these conditions may be constituted by proclamation a common gambling house. The whole question is one that must be decided on wider considerations than those of the Stamp revenue. But wh'le there would appear *prima facie* to be good reason for a general reform, it would appear that, if it were carried into effect, it would result in a substantial addition to the revenue derived from a class of transactions on which a charge may legitimately be imposed.

PENALTIES FOR NON-PAYMENT OR INSUFFICIENT PAYMENT OF STAMP DUTY.

The penalties provided by the Indian Stamp Act for non-payment of stamp duties are to some extent so severe as to defeat their object. Under Section 35 of the Act, no instrument chargeable with duty shall be admitted in evidence for any purpose, or be acted upon, registered or authenticated by a court or a public officer unless it is duly stamped. But proviso (*a*) to the section allows the admission in evidence on payment

*Devas, Political Economy, Book VI, Chapter X, Section 11.

of the prescribed duty and penalty of unstamped or insufficiently stamped documents except in the case of (1) instruments chargeable with a duty of half an anna or one anna only, excepting receipts, (2) bills of exchange and (3) promissory notes. The prescribed penalty is Rs. 5, or when ten times the amount of the proper duty or deficient portion thereof exceeds Rs. 5, a sum equal to ten times such duty or portion.

Total exclusion from evidence of certain unstamped documents.

Instruments chargeable with a duty of one anna only (excepting receipts) and bills of exchange and promissory notes thus cannot be admitted on payment of any penalty. The instruments which were chargeable with a duty of one anna under the Indian Stamp Act of 1899 were:

(i) Acknowledgment of a debt exceeding Rs. 20 (Article 1).
(ii) Agreement or memorandum of agreement relating to the sale of a Government security or share in an incorporated company or other body corporate or a bill of exchange [Article 5 (a)].
(iii) Bill of exchange payable on demand [Article 13 (a)].
(iv) Certificate or other document evidencing the right or title of the holder thereof or any person to any shares in a company or to become a proprietor of any shares. (Article 19).
(v) Cheque (Article 21).
(vi) Delivery order in respect of goods (Article 28).
(vii) Letter of allotment of shares in a company (Article 36).
(viii) Letter of credit (Article 37).
(ix) Mortgage of a crop, etc. [Article 41 (a)].
(x) Note or memorandum sent by a broker or agent to his principal, intimating the purchase or sale of goods, etc., (Article 43).
(xi) Policy of insurance for or upon any voyage where the premium or consideration does not exceed the rate of two annas. or one-eighth per centum, of the amount insured by the policy [Article (A) (1) (I)].
(xii) Certain other policies of insurance (Article 47).
(xiii) Promissory note payable on demand (Article 49).
(xiv) Proxy (Article 52).
(xv) Receipt for money, etc., exceeding Rs. 20.
(xvi) Shipping order (Article 60).

The duty payable on items (ii) and (x) was increased by Act VI of 1910, and that payable on items (iv), (vii), (viii), (xiii) (where the amount or value exceeds Rs. 250) and (xiv) was increased by Act 43 of 1923. The duty payable on item (ix) has been increased by various Local Legislatures. Of the remaining documents those which more constantly come before courts of law in India and which affect ordinary transactions between private individuals are (1) acknowledgments and (2) promissory notes.

Exclusion from evidence works hardship in several cases.

The exclusion of these documents from evidence for non-payment of duty often causes great hardship, and in I.L.R., 46 Madras, 948, which was a case of an acknowledgment, was described by Sir Walter Schwabe as "the appalling penalty of the plaintiff losing his claim altogether". Not only is the punishment quite disproportionate to the offence, it often falls on the wrong person and rewards the guilty party at the expense of his adversary. For, in cases where the omission to stamp is due to the carelessness or fraud of the executant, it is he (the executant) who benefits by the document being inadmissible in evidence. The penalty is also very uncertain. In some cases, where a promissory note is inadmissible by reason of its not being duly stamped, it is permissible to prove its consideration independently, the promissory note being in such cases merely evidence of an independent antecedent debt and not the cause of action itself. In what cases secondary evidence can be given and in what cases it cannot be given, are questions which in practice are involved in serious doubt.

Again, where a document alleged to be a promissory note has been admitted in evidence by the trial court on payment of a penalty, the admission cannot be questioned in a court of appeal, howsoever erroneous that admission might have been—1923, Lahore, 142; 40 M.L.J., 479. In other words, an unstamped document once admitted in evidence is admitted for ever. In the meantime expense is caused to the parties by proper and improper objections taken to the admissibility of secondary evidence.

Further, there is always the temptation to evade the law on account of its harshness. If a promissory note is unstamped and on that account inadmissible in evidence, the party who bases his claim on it and would

lose his suit by reason of its being unstamped, can hush it up and allege that it has been lost. In a suit on a lost promissory note, the presumption under section 118 of the Negotiable Instruments Act would be that the instrument was duly stamped, and it would be an uphill task for the defendant to make out that the document was in fact unstamped.

Reasons for the exclusion.

It is true that the law as to the admissibility of unstamped bills of exchange and promissory notes is the same in England as in India. The reason why the law has excluded these common documents from subsequent rectification by payment of the proper duty and penalty is that otherwise the stamp duty on them would hardly ever be paid. Unstamped documents cannot be seized like contraband by officials charged with the administration of the stamp revenue. The Collector has to wait until the possessor of an unstamped or insufficiently stamped instrument himself discloses the breach of the law by producing it before a court or a public officer. The result is that many promissory notes are never seen except by the drawer and the drawee. If they were made admissible in evidence though unstamped, on payment of a penalty, however heavy, it is feared that the result would be that in many cases parties would be prepared to take the risk and evade the stamp duty. When the Stamp Amendment Bill of 1923, which enhanced the duties on promissory notes payable on demand, was under consideration, a suggestion was made that the provision for the invalidation in evidence of unstamped promissory notes should be repealed, but the Select Committee on that Bill only recommended a temporary suspension of the provision and refused to recommend a permanent relaxation thereof on the grounds that the provision was one "of very long standing both in the English and the Indian Law and that to do away with it permanently would lead to evasion of payment of duty". On the 23rd of September 1924, a private member's Bill to amend the Indian Stamp Act so as to place the law validating insufficiently stamped or non-stamped documents on a uniform basis was thrown out by the Legislative Assembly on the same grounds.

Reasons examined

At the same time, it is doubtful whether the fear that the removal of the penalty of invalidation would lead to any considerable degree of evasion of the stamp duty is based on anything more than an impression. In most cases, non-payment of stamp duty, even on instruments more heavily taxed than promissory notes, is not due to any desire on the part of the executants to defraud the Exchequer, but to the trouble and difficulty of getting the exact kind of stamp at the right moment. Therefore the exaction of a small penalty might be a far more effective preventive, as well as a more equitable punishment, than the invalidation of the document altogether, and in the long run it would probably also prove to be a better source of revenue. In many cases the effect of the existing law is to exclude from the cognisance of courts important documentary evidence, and the substitution in its stead of the oral evidence of suborned witnesses. If the bar to the admission of these documents were removed, reliable evidence would be forthcoming in courts, the Government would receive the penalty on each document admitted, and as for the party concerned, it would be better for him that the money which now goes to witnesses should be gathered in by the Government as stamp revenue. A change in the law in the direction suggested would be to the advantage of all parties concerned.

The rigour of the law is already mitigated in the case of bills of exchange and promissory notes.

So far as bills of exchange and promissory notes are concerned, Section 47 of the Act provides:—"When any bill of exchange, promissory note or cheque chargeable with the duty of one anna is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and upon cancelling the same in manner hereinbefore provided, may pay the sum payable upon such bill, note or cheque and may charge the duty against the person who ought to have paid the same or deduct it from the sum payable as aforesaid, and such bill, note or cheque shall, so far as respects the duty, be deemed good and valid.

"Provided that nothing herein contained shall relieve any person from any penalty or proceeding to which he may be liable in relation to such bill, note or cheque".

This provision moderates the rigour of the law in respect of these negotiable instruments.

The penalty may be abolished at least in the case of acknowledgments.

But in the case of acknowledgments, no such provision exists. "It is obvious", said Lord Cairns, in Marine Investment Company *vs.* Haviside, L.R. 5 E.&I., page 624, "that in one sense it is disagreeable to hold that a case should fail for want of a stamp being affixed on the instrument, and there are cases in which such a result arising from an accident must be regarded with painful regret". It is not to be wondered at therefore that the courts have shown a tendency to interpret the definition of an acknowledgment in such a manner as to exclude from the operation of the existing law of inadmissibility in evidence many instruments which would *prima facie* be regarded as acknowledgments.

An acknowledgment has not been defined in the Stamp Act, but under Schedule I, Article 1, an acknowledgment is liable to a stamp duty of one anna if it is an acknowledgment of a debt exceeding Rs. 20 written or signed by or behalf of a debtor in order to supply evidence of such debt in any book, etc., provided that such acknowledgment does not contain any promise to pay the debt or any stipulation to pay interest or to deliver any goods or other property. The crucial words in this description are (i) the words constituting the proviso at the end and (ii) the words "to supply evidence of such debt". When the words used contain more than a mere acknowledgment and amount to a promise to pay the debt or a stipulation to pay interest, they may amount to a bond or an agreement and cease to be an acknowledgment chargeable with a duty of one anna under Schedule I, Article 1. An unstamped agreement or bond can be admitted in evidence on payment of the prescribed stamp duty and penalty, while an unstamped acknowledgment cannot be so admitted. Owing to the fineness of the distinction between an acknowledgment under Article 1 on the one hand and an agreement or a bond on the other, which distinction is dependent on the interpretation of the language used with reference to the surrounding circumstances, it is often possible for a court to treat an instrument as falling under the one or the other category according to the exigencies of justice. Further an entry in an account book attested by a borrower can be charged as an acknowledgment, only where it is "intended to supply evidence of a debt". Whether the entry was intended to supply evidence of a debt or not also depends upon the circumstances of the case and, in most cases, is a mere matter of opinion. Thus, where an account book contained two sides, one side of sums advanced, and the other of sums received, and the borrower signed the entry relating to each sum advanced, his signature was held to be intended merely to secure an acknowledgment that the sum was advanced, and not that the sum was due. The court said:—"Whether or not the sum is due depends upon the state of the account". On this ground, entries in account books with signatures of borrowers have been held not to be acknowledgments under Schedule I, Article 1, and therefore not liable to any stamp duty at all—30 Cal., 789; 31 Cal., 1043.

It has also been held that, where an acknowledgment is made for the purpose of saving a debt from being barred by limitation, it is not an acknowledgment intended to supply evidence of a debt, and consequently that it is not liable to stamp duty under Article 1. For instance, in I.L.R., 39 Cal., 789, an account between the parties was adjusted and a certain sum was shown as due by the defendant to the plaintiff. The plaintiff appended the words, "I accept this as correct", and the defendant subscribed his signature thereto. The balance thus acknowledged amounted to Rs. 45,000 and odd, and thereafter further dealings took place, the total claim of the plaintiff in the suit being over Rs. 58,932. *Prima facie* one would regard this as an acknowledgment, but if it had been held to be so, being unstamped, it was inadmissible in evidence, and if it was inadmissible the claim of the plaintiff was barred by limitation. The Court, consisting of Chief Justice Jenkins, and Woodroffe, J., held that it was not an acknowledgment within the meaning of Article 1, Schedule I of the Stamp Act. The learned Chief Justice expressly stated that "any other conclusion might lead to considerable inconvenience and detriment". In I.L.R. 46 Mad., 948, already referred to a *rokka* containing debit and credit entries, the amount of interest and a balancing item at the end with the words "balance payable up to. . . . . . ." and the signature of the person giving the *rokka* was held to be only an

acknowledgment for the purposes of saving limitation, and not an acknowledgment intended to supply evidence of a debt and as such to be admissible in evidence, though unstamped.

In England, there is no separate classification of instruments called acknowledgments, and I.O.U.'s are not liable to be stamped at all. The definition of a receipt is slightly wider than in India and entries in account books signed by the borrower, which sometimes escape stamp duty in India, are chargeable as receipts. In the nature of things, there cannot be many acknowledgments not amounting to agreements, promissory notes, bonds or receipts and strictly falling under Schedule I, Article 1, of the Indian Stamp Act. No serious loss of revenue would occur if the stamp duty payable on acknowledgments were abolished altogether. And in any case, while an unstamped receipt is entitled to be admitted in evidence on payment of a penalty of Re. 1, it is difficult to understand why an unstamped acknowledgment under Schedule I, Article 1, should not be admitted on payment of a similar penalty, and why it should be liable to be altogether excluded from evidence. If the duty on an acknowledgment is to be retained, the instrument should at least be omitted from the list of documents liable to be excluded from evidence on the ground of not being duly stamped.

Pecuniary penalties too heavy.

Even the monetary penalty prescribed by the Act is in several cases a very heavy one. The general law as to penalty in England is contained in Section 15 of the Stamp Act of 1891. Under that section, subject to the other provisions of the Act, any unstamped or insufficiently stamped instrument may be stamped after its execution on payment of the unpaid duty and a penalty of ten pounds, and where the unpaid duty exceeds ten pounds, of interest on such duty at the rate of five pounds per cent per annum from the date on which the instrument was first executed up to the time when the amount of interest becomes equal to the unpaid duty. In the case of certain instruments such as bonds, conveyances, leases, mortgages and settlements, there is a provision for the levy of an additional penalty equivalent to the stamp duty on the instrument. But in practice, the Commissioners do not enforce this as they have a discretion to remit it where reasonable cause for the delay in stamping or the omission to stamp or the insufficiency of stamp is afforded to their satisfaction. In fact under section 15 (3) (b) of the English Stamp Act, they may, if they think fit, at any time within three months after the execution of any instrument mitigate or remit any penalty payable on stamping. Under section 14 of the English Stamp Act, instruments not duly stamped may be received in evidence on payment of the unpaid duty and the penalty payable on stamping the same and of a further sum of two pounds. In the case of documents liable to comparatively high duties, these penalties work out at less than what is leviable under the Indian law, viz., ten times the stamp duty. It is true that under section 39, the Collector is empowered to refund any portion of the penalty in excess of five rupees which has been paid in the case of instruments admitted in evidence, and that under section 40 he is also empowered to stamp impounded instruments after receiving any amount "not exceeding ten times the unpaid stamp duty". But these discretionary powers are not widely known and are seldom exercised.

Evasions penalty.

In actual practice, the high penalties prescribed on unstamped or insufficiently stamped documents have the effect of making the parties hush up such documents altogether. Moreover, instances are said to be not wanting in which courts have treated what in reality is a document liable to a higher duty as a document of a class liable for lower duty. Where, for instance, a document is a bond and is liable to an *ad volorem* duty, it may be held that it is an agreement liable to a fixed duty of eight or twelve annas. Otherwise where the instrument secures a large amount, it may become chargeable with a penalty of Rs. 50 or Rs. 60 or even Rs. 1,000, and as Sir T. Desikachariar said in his evidence, the courts, in order not to harass the litigants, construe the document in the manner which is most favourable to them. The law does not even provide a limit to the sum that can be levied as penalty. The Stamp Act of 1869 fixed a limit of Rs. 1,000, but this maximum was removed in 1879. As a result there is ground for the impression that courts are unduly lenient in admitting as evidence unstamped or insufficiently stamped documents, and that in not a few cases they are admitted without payment and without much scrutiny.

Not only this. It is quite a common thing for parties in civil suits to produce documents in court, and on their being shown to be liable to a heavy stamp duty and penalty, to withdraw them without exhibiting them in evidence. When this is done the courts virtually allow persons who have committed offences against the revenue to withdraw the proofs of their offences without any determination of the question of their liability to punishment. Under section 33 every person having by law or consent of parties the authority to receive evidence and every person in charge of a public office except an officer of police before whom any instrument chargeable, in his opinion, with a duty is produced or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped, impound the same. There is no corresponding provision in the English law, and though the Indian law gives a power to impound, the power is given only in cases "where the instrument is produced or comes before a court or a public officer in the performance of his functions". Now where, in a suit for the recovery of money on an entry in an account book, the plaintiff filed along with the plaint a bound account book which contained a large number of other entries which were insufficiently stamped, it was held that the court had no jurisdiction to impound entries other than the one which formed the basis of the suit. In other words, it was held that the entries could not be regarded as having been produced or having come before a court in the performance of its functions—21 Calcutta Weekly Notes, page 246. The result is that the power of impounding given by section 33 is only of limited use. Even in other cases judicial officers can hardly be expected to show the activity of officers concerned with matters of tax collection, and the effect of any slackness on their part is aggravated by the provisions of section 37 of the Act under which, where an instrument has once been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. Under section 61 of the Act, a court of appeal or reference may of its own motion, or on the motion of the Collector, consider the order of a court under section 35, determine the exact amount with which an instrument is chargeable, order its production and when produced impound it and send it to the Collector, who may then either collect the amount with the prescribed penalty or prosecute the offender. But this procedure is tardy and does not adequately safeguard the revenue. Moreover, cases coming up before courts of appeal or reference in this manner form a very small percentage of the whole, and when once a document has been admitted the chance of its being scrutinised for revenue purposes is very small.

Recommendations.

It is therefore desirable—

(1) to repeal the provisions making certain instruments liable to be excluded from evidence altogether on the ground of being unstamped or insufficiently stamped, or at least to do so in respect of acknowledgments;

(2) to reduce the penalty payable on unstamped instruments of a high value and to fix a maximum penalty of, say, Rs. 500;

(3) to empower courts and public officers to impound all unstamped or insufficiently stamped documents coming into their custody in the ordinary course of business, whether actually sought to be exhibited before them or not;

(4) to recognise the power of an appellate court to call for additional stamp duty and penalty on any document wrongly admitted by the lower court and to reject it for non-payment.

Opportunities for voluntary rectification of errors in stamping.

Section 41 of the Indian Stamp Act enables a party to produce before the Collector within one year of its execution or first execution any document which has not been duly stamped owing to accident, mistake or urgent necessity, and to pay the unpaid or deficient duty. If the time limit of one year prescribed by this section were removed, parties would be enabled to obtain relief in all *bona fide* cases of failure to stamp and the rigour of the present penalty sections would to a large extent be reduced.

Criminal penalties.

The criminal penalties provided by the Act do not call for any remarks. So far as the fear of a prosecution before a magistrate and the infliction of criminal penalties can be said to be potent factors in the calculations of the executants of instruments liable to stamp duties, they are sufficiently deterrent without being vindictive.

CERTAIN MISCELLANEOUS SUGGESTIONS.

The definitions should be brought together.

Certain definitions are found in section 2 of the Act, while other definitions are interspersed in the schedule. For instance, the word 'acknowledgment' is not defined in the Act, but is described in Article 1, Schedule I, a composition deed is defined in Article 22, and so on. It is desirable to bring all the definitions together to one and the same place.

Certain of them should be explained by means of illustrations.

There is no definition of the term 'agreement' in the Stamp Act. Courts have found considerable difficulty in distinguishing between a bond, an agreement and a promissory note. There is also a difficulty in distinguishing between receipts and acknowledgments. Releases sometimes bear resemblance in form to receipts or discharges or reconveyances of mortgaged property. It would be useful to have these terms explained by typical illustrations in the Act itself.

The usual meaning of certain terms should be restored.

In both the Indian and the English Acts, some common expressions such as 'a promissory note' and 'a bill of exchange' have a meaning which is different from that which they usually bear. As Baron Pollock said in the case of *Mortgage Insurance Corporation* vs. *Commissioners of Inland Revenue* (L.R., 20 Q.B.D., p. 651), "it is unfortunate that, in a statute dealing with revenue matters, natural terms have been enlarged so as to create a sort of legislative document, other than and different from the document which is commonly known by the term used. In the section we have to construe here the Legislature have taken a term of well-known meaning, and have then said it is to mean something else". There does not seem to exist any special reason why the definitions of certain terms should have a different meaning in the Stamp law from what they have in other laws. If there are other classes of instruments than those ordinarily connoted by these terms which it is desirable to render liable to the same duties, or subject to the same legal incidents as these instruments, such instruments may be specifically mentioned in the appropriate sections of the Act or articles of the schedule. Even now, for instance, though a letter of credit is included in the definition of a bill of exchange, it is specially provided for in the schedule to the Act. (Article 37). This conformity to ordinary meanings is particularly necessary in the Stamp law, which, as pointed out by Sir James Westland in introducing the Bill to amend the Stamp Act on 15th October 1897, is left very largely to a sort of automatic operation, that is to say, is applied by the persons affected to their own transactions. It is all the more necessary, therefore, that in its wording and in its explanations, it should be as clear as possible, so that those who desire to pay the proper duty upon their documents and who have no intention of evading the duty in any way may thoroughly and clearly understand the obligations which rest upon them. The restoration of the terms' 'bill of exchange' and 'promissory note' to their ordinary meanings would be a step in this direction.

Exemptions should be brought into the schedule.

For the reason just cited, it is desirable that all exemptions should periodically be made part of the schedule. At present a large number of them are to be found only in notifications. It is desirable that a law for the working of which the Government depend mainly upon the parties concerned should as far as possible be complete in itself.

THE RESULTS OF PROVINCIALISATION.

The reasons which brought about provincialization of these duties.

Under Schedule I, Part 2, item No. 20 of the Devolution Rules, non-judicial stamps are, subject to legislation by the Indian Legislature, a provincial subject. The circumstances under which this item came to be included in the list of provincial subjects were these: The authors of the Report on Indian Constitutional Reforms had recommended in paragraph 203 of their Report that the revenue from stamp duty should be discriminated under the already well-marked sub-heads of General and Judicial, and that the former should be made an Indian and the latter a provincial receipt. They said: "This arrangement will preserve uniformity in the case of commercial stamps, where it is obviously desirable to avoid discrepancies of rates, and it will also give the provinces a free hand in dealing with court-fee stamps and thus provide them with additional means of augmenting their resources". The Functions Committee approved of the inclusion of non-judicial stamps as an All-India subject, and item 12 of their list of All-India subjects included the following:—"Sources of Imperial revenue including customs, cotton excise duties, income-tax, salt, stamps—non-judicial." The Joint Select Committee of Parliament approved of this distribution. It was the Committee on Financial Relations (Lord Meston's Committee) that altered the scheme. As regards General Stamps, they said:—"We have approached it, in the first instance, from the point of view of the poorer provinces. Some of these, it seems clear, would start with little or no surplus revenue under the allocation of resources proposed in the report: and this would be both a misfortune in itself and at variance with what we believe to be the intention, if not the implied promise, of the report. No remedy suggests itself except some extension of the schedule of provincial heads; doles and temporary assistance would be inconsistent with the whole policy. In this view, and also because it will greatly facilitate our initial distribution of the central deficit, we advise that General Stamps be made a provincial head throughout. The arguments in the report for crediting it to the Central Government have not the same force as in the case of income-tax. We are not disposed to see grave disadvantage in different rates of stamp duty in different provinces, at least on some of the transactions for which duty has to be paid; and any uniformity which may be decided to be essential can always be secured by central legislation. Moreover, in this part of the arrangements there is still the taint of a divided head, for General and Judicial Stamps are controlled by the same agency, and there is a good deal of miscellaneous work and outlay common to both. To make the whole of the stamp revenue provincial would secure a genuine and complete separation of resources; and we trust that the reasons for this course will outweigh the only consideration on the other side, to wit, the extent to which the deficit in the All-India budget will thereby be increased". In other words, the reason for the inclusion of General Stamps among provincial heads of revenue was a desire to secure a complete separation of resources between the provincial and central Governments.

Legislation as regards some was reserved by the Central Government.

During the exploitation of all possible methods for the increase of provincial revenues which followed the War and the grant of the reforms several provincial legislatures took advantage of the inclusion of General Stamps among the sources of provincial revenue, and applied for the sanction of the Governor-General to the introduction of legislation for the enhancement of stamp duties. In their letter No. 902, dated the 17th February 1922, the Commerce Department of the Government of India reserved certain instruments for Imperial legislation and allowed the local Governments to legislate as regards other instruments. The instruments reserved by the Government of India were:—

Number in Schedule I to the Indian Stamp Act.	Description.
1	Acknowledgment.
15	Bill of Exchange.
19	Share Certificate.
21	Cheque.
28	Delivery order in respect of goods.
36	Letter of allotment of shares.
37	Letter of credit.
47	Policy of Insurance.
49	Promissory note.
52	Proxy.
53	Receipt.
60	Shipping Order.

By the Indian Stamp Amendment Act, 1923, the duties on share certificates, letters of allotment of shares, letters of credit, proxies and promissory notes payable on demand (items 19, 36, 37, 52 and 49) were enhanced by the central legislature. The duties on the remaining items reserved for central legislation were, however, left untouched.

The variations that have taken place in the case of the rest.

In their turn, several provincial legislatures increased the duties on all or most of the items in the schedule which had not been reserved for central legislation. In most cases, the increases took the shape of a percentage increase on the existing rates, and the variations that have so far resulted are not very large, as will be seen from the instances given in the table attached (Annexure A). It will be remembered, however, that this is only a first instalment, and as time goes on far greater variations may be expected if the law remains unchanged. The inconvenience of having different rates in different provinces is obvious. An instrument stamped in a province in which the stamp duty has not been increased will not be admitted in another province where it has been increased without the payment of additional duty. Where an instrument relates to properties situated in different provinces or to matters or things done or to be done in different provinces, serious inconvenience may arise in case the instrument has to be enforced in all the provinces concerned.

Some of the results—Use in one province of stamps purchased in another.

Several provinces also appear to lose a substantial portion of their legitimate revenue from stamps on account of the existing arrangement. A conspicuous instance of this loss of revenue on the part of some provinces is the case of cheques. The stamps on cheques are impressed at certain centres only, but used all over India. A bank which has its headquarters at one place and branches in various places, generally has its cheques stamped in the province where its headquarters are situated. Thus Bombay and Calcutta get the receipts on account of the cheques used in the Central Provinces and the United Provinces. It is true that, under Notification No. 6133, dated the 17th December 1924, the Government of India have amended rule 9 of the Stamp Rules with the result that any officer appointed in this behalf by a local Government is now empowered to affix and impress labels, and the local Governments have thus a free hand in the matter of establishing new stamping centres. To avoid leakage of stamp revenue on account of cheques the Government of India themselves are now proposing to establish a stamping centre at Delhi. But even if stamping centres are established in each province, it is likely that the practice of banks having their cheques stamped in the provinces where their headquarters are situated will continue.

In the same way, the stamp duty on transfers of shares in companies operating in one province goes to the province which has the stock exchange at which the transfers take place. The province without stock exchanges receives nothing under the head.

Documents executed in Bengal on account of Assam.

The problem of securing for one province a share of the stamp revenue obtained in another in cases where transactions, such as transfers of land and so on, relating to the former are carried out in the latter, has actually arisen for solution between the Local Governments of Assam and Bengal. Several species of documents relating to property or transactions in Assam are executed in Bengal with the result that Assam loses a large part of its stamp revenue to Bengal. On the basis of a calculation made for an experimental period, the amount of this loss was estimated at Rs. 45,000 per annum, which the Bengal Government, after some negotiation with the Assam Government, eventually agreed to pay as a matter of grace. The Assam Government requested that the assignment should have retrospective effect from the 1st April 1921. It cannot be denied that the demand was an equitable one on its merits, but the Bengal Government refused to comply with the demand, and in doing so, were strictly within their rights under the terms of the Devolution Rules.

The case of unified stamps.

A case of even greater complexity is that arising between the Central Government and the provinces in the matter of division of the proceeds of unified stamps. This has, for the time being, been settled by a formula, but it will be obvious that the difficulty is one which must recur so long as the system contains both the features of unification and provincialisation.

Suggested remedies—Provincial stamps.

One means that has been considered for the avoidance of difficulties of this nature is the adoption by each province of its own stamps. It is obvious that this would result in very great inconvenience, especially to the mercantile community, but the fact of such a proposal having been made illustrates the difficulties to which provincialisation has given rise.

Amendment of the Devolution Rules.

Another alternative is to amend the Devolution Rules so as to secure that the revenue collected in one province, but arising out of taxation or other revenue measures imposed by another province, should not be deemed to be revenue accruing to the latter province. The position would be even more anomalous than in the instance of Assam already mentioned if the latter province imposed taxation, not in force or at a higher rate than that in force, in the former province. Even if the principle referred to above could be established by an amendment of the Devolution Rules, difficulties might arise in its practical application which could only be overcome by some such system of lump assignment as was adopted by the Bengal and Assam Governments. But the statutory recognition in principle of the taxing Government's rights would place it in a less invidious position than at present in approaching the collecting Government for the determination of a suitable assignment, and, in case of disagreement, would permit of an appeal to the Government of India and the Secretary of State instead of placing the taxing Government at the mercy of the collecting Government.

Any rule that might be framed in this behalf would have to be hedged round with limitations to avoid trivial inter-provincial claims.

Restoration of central control the only complete remedy.

A far more complete remedy, and one which is more satisfactory in every respect, is the restoration, as part of the financial settlement, of the power to fix uniform stamp duties and to appropriate the proceeds of the same to the Central Government. This is a solution which has received the support of a large majority of the witnesses consulted. It is true that the administration of the Act would remain to some extent in Provincial hands, but as has been seen, the duties are of a kind that in a great measure collect themselves, and there need be little difficulty in adjusting the payment for the agency work done.

THE DESIRABILITY OF BETTER STATISTICS.

The statistics available suggest that the revenue has not grown proportionately to the enhancements.

Statements showing the gross receipts from non-judicial stamps for the last thirteen years are appended as Annexure B. They seem to suggest that the increased provincial receipts from non-judicial stamps in the years 1922-23 and 1923-24 have not been commensurate with the rates of increase in the stamp duties. It is impossible to say how far this result was due to the rates themselves or to a general slackness of business. The reports on the administration of stamps for the various provinces do not throw much light on this subject; but the administration report of the Punjab contains the admission that the enhanced rates of duty have not caused as great an increase as was anticipated. In the Central Provinces also, the additional receipts appear to have amounted only to Rs. 10 lakhs, as against an expected increase of Rs. 20 lakhs. In matters of stamp revenue, it is impossible to judge the results of the operation of particular rates of duty unless they have been in force for a reasonable length of time. The provincial enhancements of stamp duty are too recent to justify any positive assertion as to their effect on transactions. Nor are there in any province published statistics from which the effect of the recent enhancements can be fairly judged. The annual reports on the administration of the stamp revenue in the provinces do not contain details of the receipts from each class of transactions, such as sales, mortgages, leases, gifts, etc. The classification of receipts adopted is under the heads (1) impressed stamps, (2) *hundis*, or inland bills of exchange, (3) impressed stamps as defined in section 2 (Art. 13) (a) of the Stamp Act, (4) half and one anna unified stamps, (5) share transfer stamps, (6) stamps for legal practitioners' licenses, (7) stamps for cheques, and receipts, and so on. In other words, the classification of stamps is according to the character of the stamps and not according to the nature of the instruments stamped.

But the Indian statistics do not afford means of estimating the results in particular cases.

The English statistics are much more useful.

The annual reports of the Commissioners of His Majesty's Inland Revenue in England contain tables (Tables 33 and 34) showing the receipts under each head of transactions classified under—

- Conveyances of lands and houses.
- Conveyances of other property.
- Leases.
- Mortgages, etc., of lands and houses.
- Mortgages, etc., of other property.
- Settlements.
- Transfers of stocks and shares.
- Contract notes.
- Cheques.
- Bills of exchange and promissory notes.
- Life insurance policies.
- Marine insurance policies.
- Agreements under hand, etc.

Suggested enquiry into the adoption of a similar plan.

The preparation of these statistics is facilitated by the fact that in England the great bulk of the documents are stamped by impression and before being impressed are marked by an officer known as the Marking Officer with the amount of the stamp due. It is from the registers kept by this officer that the particulars above noted are obtained. Since there is no such officer in India and since, moreover, the list of instruments which are compulsorily registrable in India is limited, the only way in which similar statistics can be collected is from the returns made by stamp vendors, who even now under the rules for the sale of stamps in some provinces (e.g., the Punjab) under section 74 of the Act are required to note in the vend registers kept by them in respect of each stamp sold "the purpose for which the purchaser states that the stamp is purchased". It seems to be a matter worth enquiry whether it would be practicable and worth while to require the maintenance of similar registers in all provinces and the compilation from them of returns of the amounts of stamp duty collected in respect of each class of transaction.

In the meantime, in the absence of adequate statistics, there is no satisfactory means of determining the effect of the recent changes in the stamp law on particular classes of transactions. There is no ground for supposing that the existing stamp duties press with great severity on any class of the population. At the same time, it must not be forgotten that it was in the year 1860—a period of great financial pressure, when the income-tax was first introduced and the tax-yielding resources of the empire were being strained to the utmost limit possible—that the general stamp law for all India was first enacted. Though, since then, several amendments have been made in the law, in several cases the rates of stamp duty are not what they would be, were stamped duties to be newly introduced at the present day. Various proposals have been made in this monograph which are calculated to increase the rate of duty in some cases and to reduce them substantially in others. If accepted, they would eventually have the effect of increasing the stamp revenue.

Undesirability of frequent changes in the law.

For obvious reasons, it is undesirable to make frequent changes in the stamp law and to create uncertainties in regard to the amount of duty payable on particular classes of instruments from time to time. As already pointed out, this branch of the law has to be applied by the people themselves, without in a majority of cases the assistance of lawyers who may be supposed to be in touch with the latest developments in the law, and that being the case, frequent changes in the law lead to innocent breaches thereof by persons ignorant of such changes. Since the Act of 1899 was enacted, there have been as many as twelve amending Acts in respect of it in the Central Legislature alone, besides the recent amending Acts in the local legislatures. Whenever any further amendment of the stamp law is undertaken, it should be on such comprehensive lines as would obviate the necessity of further alterations for a long time.

Annexure A.

Table comparing the rates imposed on certain classes of documents by different Provincial Legislatures.

Description of instrument.	Imperial.	Bengal.	Bombay.	Madras.	Punjab.	Central Provinces.	Assam.
	RS. A. P.	RS. A. P.	RS. A. P.	RS. A. P.	RS. A. P.	RS. A. P.	RS. A. P.
1. Adoption deed	10 0 0	20 0 0	20 0 0	15 0 0	20 0 0	20 0 0	20 0 0
2. Agreement—							
(a) If relating to the sale of a bill of exchange.	0 2 0	0 3 0	0 4 0	0 3 0	0 4 0	0 3 0	0 3 0
(b) if relating to the sale of a Government security or share in a Company.	One anna for Rs. 10,000 subject to a maximum of Rs. 10.	1½ annas for Rs. 10,000 subject to a maximum of Rs. 15	2 annas for Rs. 10,000 subject to a maximum of Rs. 15.	Same as in Bengal.	Same as in Bombay.	Same as in Bengal.	
(c) if not otherwise provided for ..	0 8 0	0 12 0	1 0 0	0 12 0	1 0 0	1 0 0	0 12 0
3. Agreement relating to deposit of title-deeds or pawn or pledge where the loan is repayable in three months from the date of instrument—							
Where the amount is below Rs. 200	0 3 0	0 4 6	0 4 6	0 4 6	0 4 6	..	0 4 6
Where the amount is between Rs. 200 and Rs. 5,000.	4 8 0	6 12 0	..	6 12 0	6 12 0	..	6 12 0
Where the amount is between Rs. 5,000 and Rs. 25,000.	22 8 0	33 12 0	..	33 12 0	33 12 0	..	33 12 0
4. Bond for Rs. 400	2 0 0	2 8 0	3 0 0	2 8 0	2 8 0	2 8 0	2 8 0
,, Rs. 1,000	5 0 0	7 8 0	7 8 0	7 8 0	7 8 0	7 8 0	7 8 0
5. Conveyance up to Rs. 50..	0 8 0	0 12 0	0 8 0	0 12 0	0 12 0	0 8 0	0 12 0
Conveyance between Rs. 200 and Rs. 300	3 0 0	4 8 0	4 8 0	4 8 0	4 8 0	4 8 0	4 8 0
Conveyance between Rs. 900 and Rs. 1,000.	10 0 0	15 0 0	15 0 0	15 0 0	15 0 0	15 0 0	15 0 0
6. Debenture transferable by endorsement for Rs. 200.	1 0 0	1 8 0	1 8 0	1 8 0	1 8 0	1 0 0	1 8 0
Debenture transferable by endorsement for Rs. 400.	2 0 0	3 0 0	3 0 0	3 0 0	3 0 0	2 8 0	3 0 0
7. Mortgage deed without possession for Rs. 400.	2 0 0	2 8 0	3 0 0	3 0 0	Same as in Bengal.		
Mortgage deed without possession for Rs. 1,000.	5 0 0	7 8 0	7 8 0	7 8 0	Do.		
8. General power in favour of one person.	1 0 0	1 8 0	2 0 0	1 8 0	2 0 0	1 8 0	1 8 0
9. Share warrant for Rs. 1,000	15 0 0	22 8 0	..	..	..	..	..
10. Transfer of shares..		One half of the duty payable on a conveyance as above.			..	..	..

Annexure B.

Statement showing the gross receipts from non-judicial stamps.

—	Madras.	Bombay.	Bengal.	Burma.	Punjab.	Bihar and Orissa.	Central Provinces and Berar.	Assam.	United Provinces
	RS.	RS.	RS.	RS.	RS.	RS.	RS.	RS.	RS.
1911-12	45,88,930	37,85,159	59,58,305	15,85,453	18,69,239	12,00,029	11,70,110	3,08,742	24,57,363
1912-13	50,38 907	42,44,133	67,17,703	16,79,771	19,03,990	13,04 723	12 61,807	3,38 635	25,35 177
1913-14	52,60,095	44,02,986	73,97,101	17 05,259	20,15,266	14,44,545	13,67,378	3,78,803	27,05,979
1914-15	48,36,229	37,09,151	59,56,509	14,13,421	18,71,593	14,23,293	11,86,679	3,80,097	25,24,501
1915-16	51,16,450	39,64,290	69,42,693	14,55,451	19,68,957	14,78,422	11,94,376	3,68,753	26,10,866
1916-17	54,76,545	47,15,347	78,61,262	15,69,446	20,56,144	14,80 378	12,48 023	3,54,216	26,24,754
1917-18	54,34,127	55,01,416	69,66,241	13,35,601	20,59,891	14,35,568	13,07,199	2,87,997	27,55,625
1918-19	60,18,873	56,01,082	82,00,811	16,32 405	23,02,385	15,23,461	13,26,874	3,12,374	Not available.
1919-20	76,17,087	85,59,929	1,23,51,694	22,25,471	33,71,764	20,17,502	17,63,565	4,37,125	
1920-21	70,56,193	92,70,461	1,10,98,291	25,89,115	31,28,289	19,16,721	16,13,456	4,71,024	35,71,510
1921-22	72,81,467	77,85,565	96,52,634	29,09,033	32,06,321	20,75,499	16,72,051	4,00 322	34,69,523
1922-23	87,82,095	86,98,459	1,11,19,187	27,75,059	30 99,475	19,49 161	18,79,942	5,23,072	35,12,904
1923-24	90,51,695	82,61,534	1,10,24,996	29,10,613	32,43,536	19,43,936	22,27,183	5,71,490	38,84,787

APPENDIX XI

Chapter XI—Fees.

A Note by the Legal Adviser to the Committee on fees levied under the Court-fees Act, 1870.

GENERAL PRINCIPLES.

Fees distinguished from taxes.

Fees are payments required to be made for the use of institutions provided by the Government in the public interests, but not for purely fiscal purposes. They are in fact a particular kind of price, the price of services, of actions. Though they resemble taxes in that, like taxes, they are also compulsory contributions levied by the State for the purpose of defraying its expenses, and are manifestations of its taxing power, they are distinguishable from taxes because, while in the case of a tax it would be impossible to say what services it was destined to recompense, in the case of a fee there is never any uncertainty about it. "The essence of a tax", says Professor Taussig, "as distinguished from other charges by Government, is the absence of a direct *quid pro quo* between the tax-payer and the public authority.* "On the other hand, the essential characteristic of a fee is the existence of a measurable special benefit, together with a predominant public purpose".† The special benefit to the individual may arise either out of a positive action of the Government or out of a simple permission or license granted by it. Again, a tax is generally based on the ability or the faculty of the tax-payer, while a fee is based upon the special benefit accruing to the payer of the fee. It is immaterial that, while conferring a special benefit on certain individuals, the service for which a fee is levied may also confer a general benefit on the community as a whole, though not in equal degree. The border line between a fee and a tax may not be clear-cut and the two may easily shade into each other, but the distinction between them cannot be ignored.

Origin of court-fees and their universality.

In the evolution of society the submission of disputes between members of a class to a chief or king is at first voluntary, and he is regarded as entitled to a fee or present for his services. Afterwards the voluntary submission becomes compulsory, but the persons who seek his decision are still bound to pay for it. The fee paid by a litigant in a Roman civil action known by the name of *sacramentum* (from which the action itself became known as the sacremental action) has been described by Maine in his "Early Institutions"‡ as the earliest representative of modern court-fees. In all the ancient governments of Europe which were founded upon the ruins of the Roman Empire, judicial authority was a source of revenue rather than of expense. The mistake made in those countries was that judicial fees were allowed to go into the pockets of the judges and not into the Exchequer of the State. In France the fees of courts known by the name of *Epices* constituted the major portion of the emoluments of the judges until they were abolished at the Revolution. In England, courts were so largely maintained by fees that their encroachment on one another is to some extent attributed to this system, each court endeavouring to draw to itself as much business as it could, and taking cognizance of many suits which were not originally intended to fall within its jurisdiction. Judicial fees were also common in the German States and in many of the States of America. So universal was the system of judicial fees that Adam Smith declared that justice was never in reality administered *gratis* in any country§. And his view was that the whole expenses of justice ought to be defrayed by the fees of courts or by a stamp duty on proceedings in courts.

In his 'Public Finance' Bastable points out that most legal systems tax litigants, and that though the English and French charges do not

* Principles of Economics, II, page 505.
† Seligman, Essays in Taxation, Chapter XIV (vi).
‡ Page 255.
§ Wealth of Nations, Book V, Chapter I, Part II.

exceed the level of fees, the German fees from the courts of justice contain a tax element. He says: "The Prussian net receipts from this source were about £1,750,000 in 1868, £2,300,000 in 1894-95 and over £2,500,000 in 1897-98, though the part inclusion of non-contentious fees makes precise statement difficult."*

The early history of court-fees in India favoured the idea of taxation through this means.

In India, though there is nothing to show that anything was levied in the form of a fee at the time of the institution of suits or proceedings, yet the unsuccessful suitor had, over and above the satisfaction he was obliged to make to the other party, to make an amercement to the sovereign for the trouble he had given to him. Sometimes a sum was demanded both from the winning and the losing party. Manu says: "When a debtor denies a debt and it is proved by some means to have been contracted, the King should cause the money to be paid to the creditor and have the debtor pay a small fine in proportion to his ability to pay it".†

"When a debtor has acknowledged in court that a debt is really due, he deserves a fine of five in the hundred, and if he has denied the debt, he should be fined twice as much."†

Narada says: "But if a rich debtor, through dishonest perverseness, pay not his debt, the King may take only a twentieth part of the sum, if circumstances be very favourable to the debtor or if he acknowledged the debt in court." ‡

These texts refer to the penalty which the losing party had to pay to the King. The following text of Yajnavalkya shows that even the successful party had to pay a contribution to the State—

"A debtor shall be forced to pay to the King ten in the hundred of the sum proved against him. And the creditor, having received the sum due, must pay five in the hundred (towards defraying the charges of Judicature)." ‡

It was the practice of the Mahratta Government to levy a tax from both parties, that from the winner being termed *harki*, and that from the loser *gunhegari*.§

The economists were responsible for a reaction against judicial taxes.

The opinion that "Justice must not be sold" appears to have originated with Bentham. He regarded taxes on law proceedings as "a species of attack upon security, seeing that they amount to a refusal of the protection of the law to those who cannot afford to pay for it. They accordingly hold out to crime a hope of impunity, for it is only a matter of choosing as the man to be wronged one who cannot find the funds necessary for a prosecution, or at any rate is not in a position to incur the risks attendant on the institution or process."|| These views were emphasised by Mill who also held that judicial taxes were a tax on redress and therefore a premium on injury. He attacked the doctrine that those may fairly be required to bear the expenses of the administration of justice who reap the benefit of it as based on a fallacy. He pointed out that "those who were under the necessity of going to law were those that benefited least and not most by the law and its administration. To them the protection which the law affords has not been complete since they have been obliged to resort to a court of justice to ascertain their rights or maintain those rights against infringement: while the remainder of the public have enjoyed the immunity from injury conferred by law and the tribunals without the inconvenience of an appeal to them".¶ This method of argument obtains some strength from the fact that law suits do not always arise from mistakes. If they did, there might be some force in the contention that the parties at fault should pay for the correction of those mistakes. For more often do law suits arise from the intentional wrong done by one party or from what Bentham called

* Bastable's Public Finance, Third Edition, page 581.
† Manu, Chapter VIII, verses 51 and 139.
‡ Colebrooke's Digest of Hindu Law, Volume I, page 251.
§ Whitely Stokes' Hindu Law Books, page 120.
|| Bentham's Principles of the Civil Code, Chapter 15.
¶ Mill's Principles of Economics, Book V, Chapter I.

"the incognoscibility of the law." In fact, the uncertainty of the law was the chief reason why Bentham denounced judicial taxation as mischievous. And his remedy is well known. It was "an all-comprehensive code of substantive law, having for its end in view the greatest happiness of the greatest number, each part of it present to the minds of all persons on whom conformity to its enactments, its attainment of its end, depends; and an all-comprehensive code of adjective law, otherwise called a code of procedure, having for its end the giving, to the utmost possible amount, *execution and effect to the enactments of the substantive code.*"

The views of Bentham were more idealistic than practical. His diagnosis of the evil erred too much on the side of overlooking the part which the stupidity, callousness and fraud of individuals play in contributing towards litigation. As Sir Henry Maine pointed out in the course of the discussions in the Legislative Council in 1869 on the Court-fees Bill "The truth was that, though people were often involved in litigation through no fault of their own, yet a vast amount of litigation arose from complications of fact produced by the neglects of themselves or their predecessors in title, by unbusinesslike habits, by heedlessness or by sheer folly." * Several witnesses have justified judicial taxation in this country on the ground that it is necessary to check the excessive tendency to litigation that exists among certain classes of the community. It is pointed out by them that with such classes, litigation is an engrossing pastime, and that any tenderness shown to the litigant in the shape of a reduction of court fees would only result in enriching the lawyer without saving the litigant from ruinous expenditure.

In British India the repression of vexatious litigation was one of the objects of the earlier fees.

This view is to some extent justified by the modern history of court fees in India. The preamble to the Bengal Regulation XXXVIII of 1795. under which the British Government for the first time imposed court fees in India, thus described the reasons for imposing them: "Many groundless and litigious suits and complaints have been instituted against individuals and the trials of others have been protracted by the filing of superfluous exhibits, or the summoning witnesses whose testimony was not necessary to the devolopment of the merits of the case. The business in many of the Courts of Judicature has in consequence increased, so as to prevent the judges determining the causes and complaints filed with that expedition which is essential for deterring individuals from instituting vexatious claims, or refusing to satisfy just demands." † Two years subsequent to this Regulation, the institution fees were converted into stamp duties and were increased, the preamble of the Regulation mentioning as among its objects, not only the increase of the public revenue, but the prevention of vexatious litigation. In 1803, court fees were levied all over the country, and it may be stated generally that the earlier Regulations in all the provinces were passed, not only with the object of deriving income for the support of the courts, but to repress the number of petty and vexatious suits with which it was feared the courts would otherwise have been flooded. It may therefore be broadly stated that court fees were introduced by the British Government partially at least as a check on litigation.

It is also the State's duty to protect the innocent from unnecessary expenditure in the law courts.

It is sometimes stated that the administration of justice is an essential function of the State, that on it depends in a great degree, the security of person and property in a State and the prosperity of the country generally, and that resort to courts should not be rendered impossible to any class of persons by the insistence on fees, however moderate. It is true that in one sense, any fee, however low, may diminish to some extent the amount of use made of the services for which it is paid; but that diminution may be less detrimental than an abolition or a further reduction of the fee. If it is the function of the State to protect legitimate rights and redress wrongs, it is equally its duty to save the innocent from unnecessary vexation and expenditure in courts of law.

* Quoted in Proceedings of the Council of the Governor-General, 1869, page 292.

† Quoted in Proceedings of the Council of the Governor-General, 1867, page 70.

The administration of justice is interdependent with other activities of the State.

Moreover, the argument that administration of justice should not be made a source of profit to be spent on other departments of the State does not sufficiently recognise the inter-connection which exists between the various departments of public activity in a State and the necessity under which the State is placed of finding funds for carrying on various kinds of services which do not themselves pay directly. The administration of justice is largely dependent on the security caused by the system of external and internal defence, a satisfactory system of law, the competence of the legislature, the development of education in the country, and so on.

The element of payment for service should prevail, but some addition is not objectionable.

Under the circumstances, the question whether judicial fees should have an element of taxation in them or should consist entirely of payment for services rendered, has not been found capable of a simple answer. On the one hand, it is necessary that access to courts should not be barred by a barrier of heavy judicial fees, and that a substantial part of the litigant public should not be deterred from having resort to the law courts; and, on the other, it is necessary that the charges should not be so low as to encourage petty and vexatious litigation, or to necessitate fresh taxation whereby the general taxpayer would be mulcted largely for the benefit of the vexatious litigant.

The revision of the Act of 1870 was interrupted by the Reforms.

Some such compromise as is above indicated may be taken to have been the underlying principle of the series of Regulations and Acts between 1795 and 1870, and as will be seen shortly, the extent to which justice was being "sold", or in other words the extent to which, if at all, the fees levied exceeded the cost of the courts was kept constantly in view. For the present it is proposed to touch very briefly on the steps taken for the revision of Act VII of 1870. It may be stated at the outset that the need for comprehensive revision has long been recognised and that as long ago as 1916 a comprehensive set of proposals was circulated to Local Governments for their opinions. The discussions on the Reforms scheme, however, delayed work on the Bill and the conversion of judicial stamps into a provincial subject under the Devolution Rules stopped it altogether.

THE PRESENT FEES AND THEIR EFFECT.

The revision of the schedules by the Provinces.

The next stage therefore consisted in the action taken by the Provinces, in the financial stress following the war, to alter the schedules as part of the process of restoring the financial equilibrium. Eight provinces took action in this direction, and the result has been a good deal of variation in the rates payable on various classes of documents. For instance, Bengal exempted suits up to Rs. 75 from the payment of the enhanced court fee, Bombay all suits up to Rs. 500, and Madras, while adopting the latter limit, restricted the exemption to suits of a small cause nature. The maximum court fee payable was fixed in Bengal at Rs. 10,000, and in Bombay at Rs. 6,000, whereas in Madras, the Punjab and Bihar and Orissa it was altogether removed. In the cases of suits falling under Article 17 of Schedule II, Bengal raised the fee to Rs. 15 in some cases and to Rs. 20 in others; while Bombay raised it to Rs. 15 in all cases and added two more cases to the article. Madras, on the other hand, split the article into three and fixed in most cases a fee on a graduated scale of Rs. 15, Rs. 100 and Rs. 500 according as the value involved in the suit was estimated for purposes of jurisdiction at Rs. 3,000 or less; or 10,000 or less; or more than 10,000, respectively.

The Madras Legislature also introduced amendments in the general principles and procedure of assessment, and in Bombay, a provision was made that in cases coming under section 7, paragraph iv, of the Act, i.e., cases where the plaintiff can value his suit according to his discretion, the minimum valuation should be Rs. 200.

The effect on litigation.

It may be of interest to notice here the complaint that these enhancements have had the effect of checking honest litigation. It is difficult to arrive at a reliable opinion on this point, as the effect of a change in the rates does not become fully apparent for some years and there are no figures available later than those for 1923 for all provinces. These certainly show a decline in institutions as compared with 1922 and this decrease has been attributed in part at least by the advocates of a reduction to the heavy incidence of court-fees. For instance, in Bengal, the number of suits instituted in 1923 was 581,909, a decrease of 22,497 on the figures of the preceding year. The decrease in money suits was as much as 7.7 per cent., the number of money suits instituted being 194,792 against 211,096 in the preceding year. In Bihar and Orissa, the number of original suits instituted was less than that of the previous year by 4,778. The decrease in money suits was 11.8 per cent. In the Madras Presidency, the number of suits instituted in the district munsifs' courts was 101,896 as against 106,184. In the Report on the Administration of Civil Justice, the High Court says that "the decrease is universally attributed to the continued effect of the Court-fees Act. It seems to be effective in discouraging litigation." In the Punjab the number of suits instituted in 1923 was 156,180 as against 187,070 in the previous year. The decrease is again attributed partly to the enhancement of the rates of court-fees. In Bombay the number of suits instituted in the mufassal courts was less than in the previous year by 7,119, the decrease in money suits being to the extent of 6.5 per cent. In the Central Provinces, the number of suits in 1923 was 78,701 as against 89,421 in the previous year, and in Berar, the figures were 112,746 and 127,038. Here too the fall in money suits was marked. It must be remembered, however, that the year in question was one of acute commercial depression, following a boom period and that on this ground a decline in the number of money suits was to be expected.

Meanwhile the question is one that has been repeatedly raised in the Legislative Councils. In Bombay, the enhancement of court-fees was temporary for a period of three years and a measure intended to place the Act permanently on the Statute Book was voted down by the Legislative Council in February 1924, though it has since had to be revived. In Madras a budget resolution in March 1925, for the lowering of the court-fees was not only carried by a majority, but in speaking on it, the Government Member in charge himself declared that a restoration of the fees to the old level in certain cases was necessary from the utilitarian and financial points of view, and that possibly the restoration of the old level might even lead to an augmentation of the revenues. He stated that his policy was to reduce the rates on money suits, but that he was not prepared to undertake any reduction in the case of what he described as 'luxury suits'. On the 26th August 1925, a resolution by Mr. Saidul Huq in the Legislative Council of Bihar and Orissa to amend the Court-fees Act so as to effect a reduction in the existing rate of court-fees was rejected by a narrow majority of 27 against 31 votes. In other provinces also the discontent has not been less vocal.

The complaint that justice is being sold.

There is no doubt that these complaints proceed in a large measure from the idea that a profit is being made on the administration of civil justice and applied to other purposes of the administration. It is therefore of importance to see, if possible, how far this idea is supported by the facts.

The existing law in India makes every allowance for petty suits and poor suitors.

In the first place, it may be noted that, in almost every Province, cheap tribunals in which no court fees are levied have been established for the trial of petty suits. Further, the provisions of Order XXX of the Code of Civil Procedure enable suitors who are unable to pay the fees on their plaints to institute their suits *in forma pauperis*. The Government cannot, therefore, be accused of attempting to deny justice to the poor man or of making ability to pay a heavy court-fee a test of eligibility for justice.

The question to what extent the courts do yield a profit is very difficult to determine.

Moreover, even when a fee is fixed at a very moderate figure, it is quite possible that it should yield a profit to the treasury. Nor is there any reason why the State should forego this. The administration of justice is in fact a monopoly, and it might well be argued that the State was justified in charging a monopoly price so long as the price charged did not exceed the value of the service rendered.

Meanwhile, whatever view may be held of the question whether the State ought or ought not to make a profit out of litigation, it is clearly most desirable that it should know whether or not the scale of fees in force for the time being has the effect of causing a profit to be made.

Previous enquiries into the matter.

With this object in view, the Government of India in the year 1886 undertook an elaborate enquiry as to the extent to which the cost of the administration of civil justice in British India was met by the revenues

derived from court-fees and other receipts of civil courts. The enquiry lasted four years, though the figures taken into account were those only of the calendar year 1885. The following receipts and charges were required to be included for the purposes of arriving at the cost of the administration of Civil Justice.

Receipts.	*Charges.*
(a) Receipts in court-fee stamps.	(a) Salaries of officers and establishments and the contingent and other expenditure of courts engaged solely in the administration of Civil Justice.
(b) Receipts in cash.	(b) A share of the salaries of officers and establishments, and the contingent and other expenditure of courts which are engaged only partly in the administration of Civil Justice, the share being determined in proportion to the time devoted by the court to civil work.
	(c) A share of the cost of the stamp establishment.
	(d) A share of the disiount on the sale of court-fee stamps.
	(e) The refunds of court-fees stamps used in Civil Courts.
	(f) A share of the expenditure on "Law Officers."*
	(g) A share in the cost of pensions and leave allowances of officers who have been engaged during any portion of their service in the administration of Civil Justice.
	(h) The rent actually paid, or, in the case of buildings which are the property of Government, a fair rent (according to the Public Works Department valuation), for the buildings or portions of buildings used by Civil Courts.
	(i) Cost of stationery and printing for the Civil Courts.

As a result of the calculations made in accordance with these instructions, the Government of India issued an important resolution, dated 9th January 1890 (No. 101, Department of Finance and Commerce) in which they pointed out that the calculations were extremely intricate and that, notwithstanding the labour that had been bestowed on them, the result could only be considered to be approximately correct. They also pointed out that charges such as cost of police guards, treasury charges, share of the rent of stamp offices and the cost of manufacturing and despatching from England the stamps by which the revenue was realized, were, though not included in the above list, also charges connected with the administration of civil justice. The result, for what it was worth, went to show that in Bengal there was a surplus which amounted to 14¾ lakhs; in Madras the receipts and charges were practically equal; and in all the other provinces the charges were much in excess of the receipts.

In the year 1914, the Hon'ble Maharaja Ranjit Sinha of Nashipur asked the Government in the Imperial Legislative Council to lay on the table a statement of the receipts and expenditure connected with the Law Courts for the preceding three years; and in replying to that question, the Hon'ble Sir William Meyer pointed out that, owing to the absence

*The Government of India subsequently doubted the correctness of the inclusion of this item in the expenditure on Civil Courts.

of necessary figures, it was not possible to prepare the statement required without careful and detailed enquiry, and that after the experience of the enquiry of the years 1886–90, the Government of India did not consider it desirable to embark on the expenditure of time and labour which such enquiry necessitated.

The Civil Justice Committee have in commenting on the returns made by Civil Courts expressed their opinion of the existing statistics by saying that "the figures as prepared are of little value" and that "no useful purpose is served by publishing meaningless or erroneous figures".* They recommend an examination of the question by competent financial authority and the laying down of certain principles for the allocation of disputable items as between civil and criminal justice.

It may be useful to illustrate this conclusion by giving some samples of the figures embodied in the existing reports on the administration of civil justice.

The existing statistics illustrated by examples.

It will be convenient in the first place to have a statement of the gross receipts from judicial stamps in the various provinces in the year 1923-24 which were as follows:—

Gross receipts from Judicial stamps.

Provinces. (1)	Total receipts under the Court-fees Act. (2)	Portion of this sum attributable to probates, etc. (3)	Return from sale of stamps for copies. (4)
	RS.	RS.	RS
Madras	1,33,18,135	2,07,609	10,30,580
Bihar and Orissa	72,36,740	35,652	47,134
Assam	12,76,484	34,765	60,541
Bengal	2,03,74,473	15,32,207	6,98,343
Burma	31,90,481	1,83,304	..
United Provinces	1,38,88,035	1,69,507	7,83,677
Bombay	80,45,269	14,06,009	..
Central Provinces	44,84,369	45,717	2,422
Punjab	65,82,159	26,559	Stamps for copies are not used in the Punjab.

With the exception of the sum attributable to payment for grant of probates, which is included in the total in column 2, and of a comparatively small part of the same total that is attributable to revenue and other officers, the whole of the sum shown represents collections made by Courts for their services, inclusive of service of processes.

The reports on the administration of civil justice of most of the provinces contain some information as to receipts and charges, but the most complete figures are those given in the reports for Bengal and Bihar and Orissa.

BENGAL.

Receipts.

	RS.
Process fees	26,96,016
Other fees	1,52,23,939
Other receipts ...	4,35,430
Copying and comparing fees	6,01,885
Fines	3,249
Total ...	1,89,60,519

Charges.

	RS.
Salaries of judicial officers	32,80,061
Establishment: Process-servers	12,32,319
Others	29,58,109
Copyists' fees	5,37,298
Contingencies and refunds	7,92,233
Total ...	88,00,020

*Report of the Civil Justice Committee, Chapter 34, paragraph 10.

The profit from civil litigation is thus shown by the High Court as Rs. 1,01,60,499. The receipts side includes income from probates, etc., of Rs. 15,32,206, and if this is excluded, the profit is Rs. 86,28,293.

BIHAR AND ORISSA.

Receipts.

	RS.
Process fees	8,98,316
Other fees	41,74,257
Copying and comparing fees	1,89,771
Other receipts ...	91,532
Total ...	53,53,876

Charges.

	RS.
Salaries of judicial officers	7,31,922
Establishment: Process-servers	2,22,467
Others	6,13,456
Copyists' fees ...	1,61,558
Contingencies and refunds	1,07,373
Total ...	18,36,776

The receipts side includes Rs. 35,652 realised on probates, etc., and if this is excluded, the profit to the Government as calculated by the High Court is Rs. 34,81,448.

It will be observed that in neither province does the expenditure include that incurred on repairs and maintenance of buildings, interest on the capital value of buildings, cost of printing and stationery supplied or pension charges.

The reports on the administration of civil justice of other provinces contain less detail. For example, the paragraph on Finance in the Madras report contains the following:—

"The receipts in civil, including sessions, courts amounted to Rs. 1,23,83,167 and the charges under the heads High Court, Civil and Sessions Courts, and the Court of Small Causes to Rs. 81,73,830. The expenditure by the Public Works Department was Rs. 1,05,271 and the cost of printing in the Government Press was Rs. 2,23,512 and of stationery supplied to the Government Press, Rs. 71,909. A sum of Rs. 33,406 was spent on rent in 1923-24."

The Bombay report says: "The total receipts of all courts (civil and criminal) have risen from Rs. 85,55,523 to Rs. 93,79,564 and the total charges from Rs. 44,16,168 to Rs. 45,67,685. These figures are supplied by the Accountant-General, Bombay".

It will be seen that in these two provinces, the figures for civil and criminal justice are lumped together. Again the receipts and charges of the process-service and copyists' establishments are not shown separately; the income from probates, etc., appears to have been included on the receipts side, while no allowance for pension charges or interest on the capital cost of buildings is made on the expenditure side. In the case of Bombay, charges incurred on the maintenance and repairs of buildings and on stationery and printing are also not included under expenditure.

The reports on the administration of the stamp revenue of the various provinces contain only the total receipts from judicial stamps and copyist stamps, but do not give separate figures for process-fees or separate figures for Civil and Criminal Courts or other public offices.

The budget estimates of the various provinces have also been scrutinised, but they do not give any further assistance either in the way of classifying income and expenditure as between civil and criminal justice or in determining the various items which should be taken into account in arriving at a balance-sheet.

The impossibility of drawing correct conclusions from them

It was hoped that, in consultation with the Local Governments, it would be possible to arrive at a satisfactory settlement of accounts regarding civil and criminal justice. But it is understood that, in the United Provinces, there is no return of any kind in existence which classifies court-fee receipts by courts, that the courts themselves have no such record, and that the only way to get the figures is to work through the individual cases for a year. In the Central Provinces also such figures as exist have reference only to the total costs and total receipts of courts. In Assam and Burma, the position is further complicated by reason of the combination of civil and criminal functions even in courts of the lower grades. In the Assam Valley and Cachar districts of Assam, the work of Sub-Judges and Munsifs is performed by the Deputy Commissioners and Extra Assistant Commissioners who are also employed on executive duties. Similarly nearly all courts in Burma combine civil and magisterial functions. In all provinces in India District Judges are also Sessions Judges and do both civil and criminal work.

The above details are sufficient to illustrate the very great difficulties that surround any attempt to work out an accurate estimate of receipts and expenditure. It is proposed nevertheless to attempt to indicate the lines on which this should be done.

Recommendation for securing a more reliable account in future.

In making up a balance-sheet in regard to civil justice, the service rendered by the State in the general maintenance of law and order which enables the man of peace to enjoy his property, the oppressed to have his wrongs righted, and the successful litigant to enforce his decree may for the time being be ignored, although these are essential elements in considering how far it is justifiable to have an element of taxation in collections from court-fees.

What courts should be taken into account.

Limiting the service to that performed by courts, the next question is what courts should be taken into account. The proposition that parties that seek justice must pay for it cannot be applied to criminal courts. As Bastable points out, "if we grant that the criminal courts are to be sustained by the parties, then one of the parties is the State, and it must draw its contribution from the public funds."* The question whether revenue and village courts should be included in the statement of accounts regarding civil justice is more difficult, but the best thing is to exclude them. The very jurisdiction in certain classes of suits given to these courts is on the ground that they should be regarded as functioning on a different basis from civil courts. Moreover, the cost of the village courts is almost nominal. Their receipts are simply fees derived from processes and the like and are spent then and there. In some provinces, e.g., Bengal, they are part of the Local Fund administration and their incomes never come into the public accounts at all. When, however, a revenue officer does civil work, as in some districts in Assam or at Kollegal in the Madras Presidency, for instance, an approximate distribution of the costs must be made. In fact, wherever civil and criminal or revenue functions are combined in one and the same officer, the expenditure on his purely civil work should be ascertained with reasonable accuracy with reference to the proportion it takes up out of his whole time.

Wha charges should be reckoned.

The next question is, what charges should be reckoned against the courts. It is obvious that the following items should be included, namely,—

Pay of officers and establishments,
Contingencies,
Stationery and printing,
Public works, buildings and repairs.

Charges connected with the Pleadership examination have sometimes been added in the statement of expenditure connected with courts, but those charges are generally met by fees for the examination and are, therefore, not to be included in the general account for courts of civil justice. There are, however, three important items which should be added to those already named and they are—

(1) Interest on the cost of buildings,
(2) Pension charges, and
(3) Charges for administrative control by the Government.

The use of buildings by civil courts is at the expense of the general tax-payer, and there is no reason why the interest on their capital cost or the rent that can be derived from them should be excluded from the expenditure on civil courts. When rents are actually paid by courts, it is not contended that they should not be debited against them. As regards

* Public Finance, page 77.

pension charges, it is obvious that they should be included in the expenditure on courts. They are as much charges of courts as salaries of officers and establishments. Only their payment is deferred. A portion of the work in the Secretariat of each province is also connected with the administrative work of the civil courts and the proportionate value of such work should be estimated and debited to civil justice.

What receipts should be set against them.

On the receipt side, the main item would be court-fees realised in cash or stamps. It has been suggested that miscellaneous items derived from courts, such as sale proceeds of unclaimed or escheated property, fines, etc., should be included. These are neither receipts from taxation, nor do they bear any relation to services rendered. They are not creditable to the specific account of the courts concerned, but should be credited to some other appropriate head. Fees derived from registration of pleaders, vakils or advocates cannot be regarded as judicial fees and should be excluded. They are, in reality, a tax on the admission of persons to the profession of law, and are further paid in the form, not of court-fees, but of general stamps. The income from pleadership examinations should be excluded with the charges connected with the examination.

Some, e.g., process and copying fees, should be earmarked for special expenditure.

As regards process and copying fees, they are payments for special services and should be so graduated as just to cover the cost of the services. If there is a large excess of income over expenditure, it is a sign that the particular service is not being properly managed, not that justice is being sold. Process fees are levied in the mufassal under rules made by the High Courts under section 20 of the Court-fees Act, which enables them to fix the fees chargeable for serving and executing processes and the remuneration of the persons employed in the service or execution of such processes. Fees for copies are levied under rules made by the High Courts by virtue of the powers vested in them by the Government of India Act. It has always been recognised that the income from these sources should be earmarked for expenditure on the special services. An excess of receipts over expenditure in respect of these services can only be justified on the ground of the fluctuating character of the income from these sources and the necessity for maintaining a margin to ensure that the income is always sufficient to meet the expenditure.

In almost all the provinces of India, the Government seems to realise a handsome profit from process and copying fees:

Name of the Province.	Receipts from process fees.	Expenditure on process service establishment.	Net profit.
PROCESS FEES—1924.			
Civil Courts.			
	RS.	RS.	RS.
Madras	21,13,833	19,73,739	1,40,094
Bengal*	26,96,016	12,32,319	14,63,697
Punjab	10,22,546	5,65,218	4,57,328
Bihar and Orissa*	8,98,316	2,22,467	6,75,849
COPYING FEES.			
Civil Courts.			
Madras	6,82,091	5,40,138	1,41,953
Bengal*	6,01,885	5,37,298	64,587
Bihar and Orissa*	1,89,771	1,61,558	28,213
Punjab	The proportion of income to expenditure is as 120 : 77.		

* Figures for 1923 are shown in the statement as those for 1924 are not available.

As regards the process service establishment, the Civil Justice Committee thought that it was "only right that the litigant should get full value for the money paid for a specific purpose," and that "the State should provide for the efficient discharge of the service for which it is paid."

Some fees do not appertain to courts.

Again, all the income from court-fee stamps in any province is *not* necessarily income from courts. The Court-fees Act requires court-fee stamps to be affixed to various documents which are presented to officers who do not constitute courts. In calculating the income of courts, it is only the court fees that are derived from courts that should be taken into account.

Others, e.g., probate duties, are not court-fees but taxes.

Even here, the receipts from stamps paid on probates, letters or certificates of administration and succession certificates should be excluded. These receipts do not constitute fees for services rendered, but are really taxes on succession, and it is only an accident that courts of law constitute the present machinery for their collection. They should not be added to the receipts of courts which are being taken into consideration for determining whether the Government is making a profit on the administration of justice. For a service rendered by the court in connection with these proceedings, it takes a separate fee on the application under Schedule II, Article 1 of the Court-fees Act.

The items to be included in the profit and loss account.

To sum up, it is suggested that for the future a balance sheet of receipts and charges on account of civil justice should be worked out in each province year by year and that for the purpose it is desirable that the Reports on the Administration of Civil Justice for the various provinces should contain sufficient materials on the following lines:—

Receipts.	*Charges.*
1. Total receipts on account of court-fees in cash or stamps, *less* stamps on probates, etc., *less* stamps entered in the process service accounts, *less* stamps for copying.	1. Pay and pensions of officers and establishments, *less* allowance for time spent in criminal or revenue work, *less* salaries of copyist and process service establishments.
	2. Contingencies.
	3. Stationery and printing.
	4. Cost of maintenance and interest on capital cost of buildings.
	5. Charges of administration in the Secretariat.

The probable results.

If such an account be made, it is obvious that in more than one province where Civil Justice is now shown as resulting in a profit, the reverse will be found to be the case. The elaborate enquiries made by the Government of India in 1886 to 1890 showed that in all the provinces of India except Bengal and Madras there was an excess of charges over receipts, the excess for the whole of India being Rs. 12,51,000. Since then the charges of judicial administration have increased in every province, owing mainly to an increase in the salaries and pensions of officers. The Retrenchment Committee appointed by the Government of the Central Provinces in March 1922 made careful calculations of the receipts and charges for that province and came to the conclusion that the administration of Civil Justice was a burden upon the general taxpayer to the extent of Rs. five lakhs. They said: "There may be some difference of opinion whether the receipts from court-fees should be expected to produce a net revenue or only to cover the cost of litigation. There can be no doubt that at present they do not do the latter." Since their report was written, court-fees have been enhanced in the Central Provinces with the result that the deficit appears to have been wiped off. In Burma, Assam and the Punjab it appears probable that a statement prepared on the lines described above would show that the administration of Civil Justice is resulting in a loss, while in one or two provinces, and especially in Bengal, it may perhaps be shown to be resulting in a profit.

THE RIVAL BASES OF CHARGE—SERVICE RENDERED AND RELIEF CLAIMED.

The main questions for consideration are methods of valuation and rates, but a question of principle arises first for consideration.

The foregoing digression arose out of the action taken by the Provinces, in increasing the rates of court-fees fixed by the schedule to the Act as part of the financial measures following the Reforms. Meanwhile, the Bill to amend the Act itself had been revised and introduced in the Legislative Assembly and referred by it to a strong select committee which reported in September 1925. Certain of the amendments proposed in the Bill and by the select committee will be referred to later. For the moment it may be said that, roughly speaking, what the Imperial Legislature have had under consideration are the principles of assessment which are dealt with generally in the sections of the Act. What the Provinces have dealt with are in the main the actual rates fixed by the Schedule. It is therefore proposed in what follows to deal with these subjects in this order. Before proceeding to deal with them, however, it is desirable to examine another question of principle, namely, the question whether preference should be given to the principle of payment for service rendered, as illustrated by the time taken by the court, or to that of payment with reference to the value of the relief sought. The former is the principle mainly adopted in the English courts and it will be useful to commence with an examination of their practice.

The system of court-fees in England is based largely on the principle of payment for the time spent on the case.

In the High Court in England, the fee payable at the commencement of proceedings in any Division is never more than £2 and for sealing a writ of summons in an action and filing a copy thereof, the fee is only 30*s*. But there are further fees payable in the course of the proceedings from the commencement till the end, such as fees on entering appearance, on interlocutory applications, on entering or setting down for trial or hearing, on entering judgment and so on. The fee payable on entering or sealing a judgment is £2, but if the trial or hearing or further consideration occupies more than five hours, a further fee of 10*s*. is payable for each additional complete hour. In the case of appeals, the initial fee is £2 or £5 according as the appeal is entered in the interlocutory list or any other list, with further fees on entering or sealing the order made on the hearing of the appeal. These fees are payable in stamps.

In the County Courts, the fees are payable in cash. Prior to 1st October 1924, the fees were divided into two Schedules, the first paid to the Treasury and the second retained by the Registrar and the High Bailiff. The two schedules have now been abolished, and all fees are now paid to the Treasury. In the year ending 31st March 1922, the expenditure on these courts amounted to £695,000, whereas the receipts amounted only to £415,000. A committee was appointed to consider the fees charged in these courts with a view to make the courts more self-supporting, and it proposed various alterations which had the effect in certain cases of reducing the fees charged, but on the whole was estimated to yield an increase of fees of something like £110,000. According to the existing rules, the most important fees in the County Courts are the plaint and hearing fees. The plaint fees in money suits vary with the amount sought to be recovered. Where it is 10 shillings or less, the fee is one shilling; where it is £1, the fee is 1*s*. 6*d*., and a similar sum is added for every £1 up to £6, on which the fee is 9*s*.; thereafter there is an addition of only 1*s*. per £1, up to £30, on which the fee is 33*s*.; from £30 to £50 one shilling is added for every £5; from £50 to £80 two shillings are added for every £10; two shillings are added for sums between £80 and £100 and another 2*s*. for sums over £100, which thus pay the maximum fee of 50*s*. On ejectment suits, the fee payable is an amount equal to the weekly value of the premises, a fraction of a shilling being reckoned as a shilling, and in suits for the recovery of land by landlords against tenants, the amount of fee payable is an amount equal to the weekly rent, a fraction of a shilling being again reckoned as an entire shilling. Suits for the delivery of goods pay court-fee at the same rate as money claims on the value of the goods. Suits for remedies or reliefs other than the recovery of a sum of money not otherwise specifically referred to in the rules pay a fixed fee of £2. Under this description come suits of an equitable character such as suits for cancellation of documents, administration suits and suits for execution of trusts.

In addition to the fee payable at the commencement of an action, a fee is payable on the trial or hearing. If, before the opening of the case, part of a claim is abandoned, or if before the trial or hearing the party against whom a claim is made pays part of the claim into court, admitting the liability for the amount so paid, the hearing fee is calculated only on the remaining relief or remedy. The hearing fee is an amount equal to the fee which would be payable on entering a plaint for the remedy or relief claimed by the plaintiff at the trial or hearing. In cases where judgment is entered up by consent or on admission or in the absence of the defendant, the hearing fee that is payable is only one-half of the fee which would be payable on entering a plaint. Applications for adjournment, except in actions for the recovery of sums of money not exceeding £2, if made before the opening of the case, are charged 2*s.* 6*d.*; and interlocutory applications pay 5*s.* In addition to these fees fairly high fees are payable on the enforcement of judgments and orders.

A similar system is in force on the Original Sides of the Chartered High Courts in India.

The system of levying court-fees on the Original Sides of the Chartered High Courts in India is more or less analogous to the system obtaining in England; a fee is paid at the time of the institution of a suit, and various further sums are paid during the progress of the suit such as hearing fees, exhibit fees and the like, so that the amount derived by way of court-fees may be said to have some reference to the time of the court taken up by the suit.

Under Court-fees Act the fees have reference chiefly to the value of the relief claimed.

Under the Court-fees Act, which in general terms may be said to apply to all courts except the Original Sides of the Chartered High Courts, a lump fee is levied once for all at the institution of the suit, and such further fees as are subsequently levied are comparatively small and in the majority of cases negligible. The fees payable at the institution of suits are graduated at regressive rates on the value of the relief claimed, but except to this extent, the Act does not recognise the principle of the graduation of rates according to the time or labour spent by courts.

It is neither practicable nor desirable to introduce the English system in India

It has been suggested, with a view to make the fee levied in the mufassal courts commensurate with the amount of labour imposed on the courts, that the system prevalent in the Chartered High Courts should be introduced in the mufassal courts also. The system in these High Courts involves: (1) a fixed fee at the commencement of a suit, which fee is in two High Courts not graduated at all and in one High Court only imperfectly graduated according to the amount involved in the suit; (2) a fixed fee payable at each hearing of the suit. It is contended that a hearing fee would graduate the court-fees according to the time and labour spent by courts, that it would have the further advantage of preventing the parties from unnecessarily wasting public time by the production of a mass of undigested evidence and prolix and irresponsible cross-examination, that it would also make it possible to penalise parties in default by making them pay the cost of the particular day wasted, and that it would shorten cases, discourage dilatoriness and negligence and materially reduce the delay in litigation. The system in the mufassal involves a lump payment to cover the whole suit from its commencement till decree, and in fact even beyond, graduated on the value of the suit. It is not inconsistent with principle to make the value of the suit an element in determining the amount of court-fee payable on it as to some extent the time and labour spent by courts on suits are dependent on, though not exactly proportionate to, the value of the subject matter. The new rates of court-fees levied on the Original Side of the Madras High Court are Rs. 150 up to Rs. 10,000 and Rs. 20 for every Rs. 5,000 thereafter, and have thus recognized to some extent the principle of graduation with reference to the value of the suit. On the other hand, as regards the imposition of a fixed hearing fee for each hearing of a suit, it must be remembered that the number of adjournments undergone by a suit or the time taken up in the hearing is not always dependent on the value of the matter in dispute. A suit involving property of a very insignificant value may be prolonged, owing to the intricacies of law and fact involved therein through so many hearings that any system of charges according to the number of adjournments might fall heavily upon the parties to it if they were poor. Again, suits and proceedings may undergo adjournments on grounds other than that of neglect of parties as where a pleader faced with an unexpected point of law or fact raised by an opponent or by the court takes time for preparation to meet it. Further, it would be impossible to devise an entirely satisfactory formula for measuring the labour imposed on a Judge at each particular hearing of a suit, which may vary from a few minutes' argument to an examination of witnesses for a whole day. Presumably it is considerations such as these that have led to the adoption of a system in the County Courts in England under which suits are charged on a regressive *ad valorem* scale by reference to the value of the matter litigated.

Another suggestion made is that a part of the fees paid on institution should be refunded in certain cases.

Another suggestion that has been made from time to time is that, in all suits or proceedings in which there has been no real contest, such as suits ending in *ex parte* decrees or in settlements out of court before the framing of the issues, there should be provision for the refund of a fraction of the court-fees paid at the time of the institution of the suit. The reasons underlying this suggestion require no elaboration. It is desirable that the court-fees should bear some relation to the labour imposed on the courts, and where a suit or proceeding has been disposed of without contest, it is clearly fair that a lesser amount should be taken as court-fee than where the time and labour of the court have been spent on account of contest.

Certain provisions of the kind exist even now.

A system of the kind suggested prevails even now in the Presidency Courts of Small Causes in India, and in the City Civil Court, Madras. Thus section 73 of the Presidency Small Cause Courts Act provides that wherever any suit or proceeding "is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid." Section 13 of the Madras City Civil Court Act provides: "Whenever any suit or proceeding in the City Court is settled by agreement of the parties before issues have been settled or any evidence recorded, half the amount of the institution fees paid by the plaintiff shall be repaid to him by the Court." It will be noticed, however, that these provisions do not refer to suits decreed *ex parte*.

And there were more prior to 1870

Prior to the Court-fees Act of 1870, there existed a more general provision for the refund of the court-fees in certain cases; but that also did not refer to suits decreed *ex parte*. Under the Code of Civil Procedure of 1859 where, on the application of the plaintiff reciting the substance of any agreement, compromise or satisfaction in accordance with which a suit was adjusted or disposed of, the court was satisfied that such agreement, compromise or satisfaction had been actually entered into or made, it was required to grant a certificate to the plaintiff authorising him to receive back from the Collector the full amount of stamp duty paid on the plaint if the application had been presented before the settlement of issues, and half the amount if it had been presented at any time afterwards, but before any witness had been examined. This was modified by Act X of 1862, which provided for a refund of only half the stamp duty paid on the plaint in cases where the agreement, compromise or satisfaction had been entered into before the suit was called up for the settlement of issues, or in suits in which the summons to the defendant was for the final disposal of the suit before the hearing had been fixed. It also provided that no certificate of refund should be granted if the adjustment between the parties was such as to require a decree to pass, on which process of execution could be taken out, or in any appealed suit.

When the Court-fees Act of 1870 was enacted, this provision was omitted. The reason for this was stated by Mr. Cockerell, who introduced the Court-fees Bill of 1869, to be that such a provision for refund was inconsistent with the principle on which court-fees were regulated, viz., the principle that the amount should be fixed, not in proportion to the labour imposed on the courts, but in proportion to the advantage which the suitor obtained through the court's action, which was the same thing as the value of the matter litigated. He said: "In the vast majority of cases in which the plaintiff withdraws from his suit at an early stage of the proceedings he has obtained no less advantage from the court's agency than the man whose case has proceeded to actual trial, and if such is the case, on the principle on which court-fees are fixed and levied, the suitors in either case should contribute equally to the cost of the machinery from which they derive an equal benefit."*

All these discussions, as has been noticed in passing, had relation only to suits compromised or settled out of court, but not to suits decided *ex parte*. While, however, from 1870 onwards the Court-fees Act contained no provision for relief in these cases, in 1914 the Government accepted a

*Proceedings of the Council of the Governor General, 1869, page 288.

resolution moved by the Hon'ble Maharaja Ranajit Singh of Nashipur for enquiry into the question of relief in the case of suits decided *ex parte* as follows:—

"That this Council recommends to the Governor General in Council that Local Governments be consulted as to the desirability of amending the Court Fees Act so as to provide for a moiety of the court-fees paid in civil suits to be refunded, if such suits are decided *ex parte*".

The case of *ex parte* disposals.

There are thus two cases for consideration, that in which the parties arrive at a settlement before the suit comes to trial or at an early stage of the trial, and that in which the defendant does not put in an appearance at all. It will be convenient to deal with the latter first. Judged by the standard of expenditure of time, an *ex parte* disposal is not necessarily a quick disposal. It has sometimes been stated that the responsibility of a court is greater in an *ex parte* case, where the defendant does not appear and take care of himself, than in one where the defendant appears and defends himself. The proposal to refund a part of the institution fees in cases in which the defendant is *ex parte* would give the plaintiff a stronger motive than at present, somehow to get the defendant declared *ex parte*, thereby increasing the irregularities and frauds in connection with the service of summons on the defendant which are already numerous. Further, under the law, a defendant against whom an *ex parte* decree has been passed may apply to the court to set it aside and hear his contest. If the court that has passed the decree rejects the application, an appeal lies, and the appellate court may set aside the decree. Thus in an appreciable percentage of cases, an *ex parte* decree, far from terminating the suit, is the starting point of highly litigious proceedings. Further, it might happen that before the *ex parte* defendant came forward to set aside the decree passed against him, the decree holder might have transferred the decree in favour of a *bona fide* stranger. Again uncontested cases are to a great extent cases in which the defendants never had any intention of disputing the claims, but would not satisfy the same till coercive processes were employed. In such cases, the court may be said to perform the useful but simple function of enforcing payment of debts, and it has been argued that there is no reason why when a court is used as a debt-collecting agency a less court-fee should be paid towards the upkeep of such agency than when it is used for the more legitimate purpose of deciding disputes. It will thus be seen that there is a service rendered in return for the fee in suits decided *ex parte* and that any attempt to refund part of it on the ground that the time of the court was not taken up in the trial of the suit might lead to serious practical inconveniences.

And that of suits settled out of court.

Nor is the case of suits comprised or settled out of court before the settlement of issues altogether a simple one. While one suit may be settled before the defendant has put in his appearance, in another suit he may have appeared in person and taken time to file a written statement, obtained orders for the discovery and inspection of documents, put interrogatories to the plaintiff and contested applications for attachment before judgment or temporary injunction. All these things may have taken place before the settlement of issues. By this time one of the parties may have arrived at a realisation of the weakness of his case or may have obtained all that he wanted, viz., the satisfaction of having dragged or driven an innocent party to the court, or what is comparatively more innocent, gained time. Thus a suit which is actually fought and disposed of on the merits may impose very much less labour on the court deciding it than a case which is disposed of by settlement out of court. Further, compromises and settlements are by no means an indication of friendly agreement to save the time of the court. It is very common for a compromise to be the outcome of a proceedings in which the intention of one of the parties has been from the commencement either to defraud the other or to use the pressure of the court to compel him to come to terms. In cases of this sort, there is no justification for any refund. Again, there are several cases in which compromises or settlements are brought about almost entirely by the efforts of the presiding judge after informal hearing of the contentions of both parties, and in such cases, the time and labour of the courts have been utilised as effectively as in cases disposed of on contest. Lastly a system of refunds on compromises or settlements out of court might well result in unnecessary applications for adjournment for the purpose of arriving at them, which officers presiding over courts would always be tempted to

grant. It must also be remembered that, even when a refund is permitted, it is always a tedious matter to secure the money, and when it has to pass through many hands there can be no certainty that the whole of it reaches the right ones at last.

A system of refunds not recommended.

It may be useful here to examine the statistics and attempt to gain an idea as to what would be the effect of such a system of refunds as is under discussion. In the year 1922, out of a total number of 2,028,345 suits under ordinary and small cause court procedure actually disposed of by regular courts (excluding village and panchayat courts) throughout the whole of India, the number of suits decided without contest was 1,572,021, or nearly 77.56 per cent. It will be clear that a refund even of a small proportion of the fees would result in a very serious loss of revenue which would have to be made up either by other litigants or by the general tax-payer, and it is for consideration whether, in the light of the circumstances above examined, there is any sufficient justification for such a shifting of the burden.

It may be added that, if a refund of the court fees is to be allowed in the classes of suits ending in disposals of the kind above referred to, the principle should logically extend to a number of other methods of disposal. There is no reason, for instance, why a like refund should not be made in the case of suits dismissed for default or withdrawn, with or without leave, or in that of suits disposed of on the special oath of a party or witness under Section 9 of the Indian Oaths Act, 1873. It will thus be seen that the figures above given of suits decided without contest would not by any means cover all the cases in which a refund would be allowable on the principle proposed. In all these cases, the time and labour of the court have been saved by a shortened process of disposal.

A better remedy is that court-fees should be levied in two instalments, one payable at the institution of suit and the other at the settlement of issues.

From the above discussion it follows that if the matter were considered from the point of view of theory alone, court-fees should be regulated with reference to the cost of the services rendered, but that it is not possible to arrive at any formula which would make the fee bear a satisfactory relation to the cost, of the service. At the same time it is evident that the time spent by the courts upon suits depend to some extent upon the value of the subject-matter of the litigation especially in view of the fact that the nature of the tribunal which tries the suit varies with the amount in issue. It follows that in fixing the scale of fees both the cost of the service rendered and the amount in issue are legitimate factors to be taken into consideration. Even in the apparently simple matter of drawing a distinction between contested and uncontested suits and allowing a refund in the case of the latter, there have been shown to exist practical difficulties which may nullify the value of any concession that may be given. An alternative course appears to be to follow the system which exists in the County Courts in England under which, as already explained, the fees are levied practically in two instalments, one at the time of institution of the plaint and a second at the trial or hearing. The sums paid on both the occasions are graduated according to the value of the relief or remedy, in the manner already described. In cases where judgment is entered by consent or on payment or in the absence of the defendant, the hearing fee that is payable is only one-half of the hearing fee which would be payable in other cases. This system combines the advantages of graduation according to the value of the suit and of graduation according to the labour imposed on courts and avoids the inconveniences connected with the refund of the fee after it has once been levied. Under a system of this sort in India the plaintiff might be required to pay at the time of institution of the suit only a moiety of the court-fee now payable on a plaint. If the defendant appeared and contested any part of the claim, the plaintiff might then be required to pay the other moiety. The objections to a system of this sort are—

(i) that it would constitute a drastic change from the present system,

(ii) that the loss of revenue consequent on its introduction would be considerable,

(iii) that in individual cases where the character of the defence admitted of easy disposal, the payment of as large a fee as that paid at the institution of a suit might appear to be arbitrary and unfair,

(iv) that there might be greater delay in the disposal of suits than at present owing to delays by or actual inability of plaintiffs to pay the second instalment, and

(v) that an unscrupulous defendant would be able to put a plaintiff to additional expenditure in order to compel him to give up his claim in whole or in part.

In spite of these objections, it is probable that the proposal would be welcomed by the litigant public as giving a much-needed relief in a large number of cases which involve comparatively little work by the courts. It would be likely to encourage compromises. Possibly also, it might induce plaintiffs to refrain from exaggerating their claims; for, when the defendant succeeds on the only point contested by him, a judge would naturally direct that the plaintiff should bear the whole of the hearing fee on the claim decreed.

These considerations would not be applicable with equal force to the case of appeals, in which it would not be practicable to make a distinction between the institution fee and the hearing fee. The whole fee payable on appeal should be made payable at the time of the institution.

QUESTIONS OF VALUATION.

The way is now open to an examination of the question of the revision of the Act, more particularly in regard to the question of valuation, which has been dealt with in the Bill introduced into the Legislative Assembly as revised by the Select Committee. It is hardly necessary to expatiate on the necessity for such a Bill.

Some provisions in the Act overlap one another or are wanting in clearness.

The Court-fees Act has served its purpose remarkably well for over half a century, but in the more complex conditions of the present day it is found that the general nature of the language employed often results in doubt whether a particular suit falls within a particular description or not. Even in the case of suits which are not uncommon, such as suits for partition, for dissolution of partnership, to set aside an alienation, or a decree, for the recovery of an office, for the restitution of conjugal rights, or for the appointment of a receiver, the Act contains no direct provision. The court-fee to be levied upon suits of the nature above stated, as well as of various other kinds of suits, can only be determined with the help of a lawyer or an annotated edition of the Act. The very volume of case law that has accumulated on the subject is an indication of the need for a fresh codification.

These remarks may be illustrated with reference to the language employed in section 7 (iv) and schedule II, Article 17 of the Act. They are quoted below:—

Section 7 (iv).

In suits—

(a) for movable property where the subject-matter has no market value, as for instance, in the case of documents relating to title;

(b) to enforce the right to share in any property on the ground that it is joint family property;

(c) to obtain a declaratory decree or order, where consequential relief is prayed;

(d) to obtain an injunction;

(e) for a right to some benefit (not herein otherwise provided for) to arise out of land; and

(f) for accounts—

According to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought.

Schedule II, Article 17.

Plaint or memorandum of appeal in each of the following suits:—

(i) to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent, or of any Revenue Court;

(ii) to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates;

(iii) to obtain a declaratory decree where no consequential relief is prayed;

(iv) to set aside an award;

(v) to set aside an adoption;

(vi) every other suit where it is not possible to estimate at a money-value the subject matter in dispute, and which is not otherwise provided for by this Act —ten rupees.

One of the chief difficulties which have arisen in the interpretation of the Court-fees Act is to decide in a given case which of these two provisions is to apply. There is no sufficient indication anywhere in the Act to show when the one is applicable and when the other. The result has been many an unnecessary contest between parties on an avoidable side issue, viz., on the question of court-fee, waste of the time of the courts and possible loss of revenue to the State.

Suits for partition.

Take, for instance, item (b) of section 7 paragraph (iv): "To enforce the right to share in any property on the ground that it is joint family property." This item has been held to be applicable to certain classes of suits for partition of joint family property. But Article 17 (vi) of Schedule II has also been held to be applicable to suits for partition, and the exact scope of these provisions has led to difficulty. The High Court of Calcutta has held that a suit for partition, either of joint property or of joint family property, where the plaintiff is already in possession of the property, is a suit which is incapable of valuation and therefore falling under Article 17 (vi) of Schedule II and not under this clause.* Even where the plaintiff is not in actual possession, he is presumed to be in constructive possession, because the possession of one co-sharer is possession on behalf of all. Accordingly it has been held in Calcutta that a suit for partition where the plaintiff is already in actual or constructive possession is only a suit for a change in the form of enjoyment of property, or in other words, to obtain a divided, in the place of the undivided share of which he is already in possession; that it is impossible to say what the value to the plaintiff of the change in the nature of his possession would be; that it is, therefore, incapable of valuation and that the suit falls under Article 17, Schedule II †. The Madras and Bombay High Courts have taken different views. The Madras High Court has held that a suit for partition and separate possession by a co-parcener in joint possession should be valued under paragraph (iv) (b) of section 7 of the Act, that is to say, according to his own valuation of his share.‡ though in later cases§ it has been held that suits by co-sharers already in possession are governed by Article 17 of Schedule II. Elsewhere it has been held that neither of these two provisions is applicable to such a suit and that the provision which applies is paragraph (v) of section 7, and that the suit should be valued as a suit for possession.||

The defect in the law sought to be rectified by the Court-fees Amendment Bill.

The Court-fees Act Amendment Bill now pending before the Legislative Assembly, as originally drafted, sought to put end to this conflict by enacting two new sub-clauses in this section, in the place of the existing item (b), as follows:—

(a) For partition and separate possession of a share of joint family property or of joint property by a person whose claim to be a co-parcener or co-owner, as the case may be, is not denied,—according to the amount by which the relief sought is valued in the plaint.

---

* 12 C.W.N., 37.

† 20 Cal., 762.

‡ 1910 M.W.N., 755.

§ 43 Madras, 396 and 1923 M.W.N., 564.

|| 33 Bombay, 658; 73 Ind. Cases, 788; 3 Patna, 618.

(b) In suits for partition and separate possession of a share of joint family property or of joint property by a person whose claim to be a co-parcener or co-owner, as the case may be, is denied,—according to the value of the share claimed computed in accordance with the other provisions of this section.

These draft amendments appear to be open to the criticism:—

Criticisms of these amendments.

firstly, that they make the institution fee payable by the *plaintiff* depend upon the defendant's attitude on a particular issue;

secondly, that they substitute a different test, namely, the acknowledgment or denial of the plaintiff's claim by the defendant, for that laid down by the Calcutta High Court, which is the plaintiff's possession or want of possession;

thirdly, that they do not provide for cases where the plaintiff's claim to be a co-parcener or a co-owner is itself admitted, but his right or claim to a share of a particular property is denied on the ground of its not being joint property or joint family property, or where the dispute is as regards the plaintiff's liability for particular debts or alienations; and

lastly, that they make no provision for the rare though possible case in which the relief sought is not partition and separate possession but a recognition of the status of a co-parcener.

The Select Committee which considered the Bill have substituted for the test of admission or denial by the defendant of the claim of the plaintiff to be a co-parcener or co-owner as the case may be, that of non-exclusion or exclusion from enjoyment of the joint property, and have thus to some extent met the objections above stated. But it is doubtful whether even distinctions based upon the plaintiff's possession of or exclusion from joint property or joint family property should any longer be preserved. It is clear that evasion of court-fee is apt to be encouraged if the amount of the fee depends upon whether a plaintiff has been in possession or has been excluded from possession. Every plaintiff would naturally allege possession and every defendant would naturally deny it, and this would lead to unnecessary contest on an unsubstantial issue. It is for consideration whether it would not be better to declare that all suits for joint possession, or for partition and separate possession, shall pay court-fee according to the value of the share claimed by the plaintiff, computed in accordance with the other provisions of the section.

Suits for declaratory decrees with consequential relief—The difficulties arising.

As a second instance of the difficulty of applying the provisions of the present Act may be taken item (c) of section 7 (iv) which deals with a suit "to obtain a declaratory decree or order where consequential relief is prayed." Suppose that both the plaintiff and the defendant claim to be the owners of a piece of land and that the plaintiff is anxious to establish his title as against the defendant. If he is not in possession of the land but the defendant is, he may sue for its recovery from the defendant. If he is in possession, he may sue for (a) a declaratory decree only, (b) a declaratory decree and an injunction restraining the defendant from entering upon his land or obstructing his possession, or (c) an injunction only. If he sues for possession, he has to pay a court-fee under paragraph (v) of section 7, that is, according to the value of the subject matter. If he sues for a declaratory decree only, he has to pay a fixed court-fee under Article 17 (iii) of Schedule II which prescribes a fixed fee on a plaint "to obtain a declaratory decree where no consequential relief is claimed." If he sues for a declaratory decree and an injunction, the suit comes under item (c) of section 7, paragraph (iv), i.e., a suit "to obtain a declaratory decree or order where consequential relief is prayed"; and if he sues for a mere injunction, his suit falls under item (d) of the same paragraph. In either of the last two cases, he can value his claim at his discretion and pay the *ad valorem fee on such* value. It is true that, under section 42 of the Specific Relief Act, 1877, no court shall pass a mere declaratory decree in favour of a plaintiff where the plaintiff, being in a position to ask for further relief, omits to do so. But where the property in dispute is large and where, if he sued for possession, he would have to pay a high court-fee, he may allege that he is in

possession and sue either for a declaration without consequential relief, which involves a fixed fee under Schedule II, Article 17, or for an injunction, valuing his suit at Rs. 5 or 10 or any other fanciful figure and paying a small court-fee on such value. Whatever the frame of the plaintiff's suit, the issues to be tried by the court are substantially the same, and when once a court has tried a suit fully and found on the issue of title, it will not be likely to dismiss it on any technical ground, such as an objection to it based on section 42 of the Specific Relief Act.

Nor is this all. In certain classes of cases, it is by no means easy to determine whether a suit is one for a declaratory decree merely or for a declaratory decree with consequential relief. For instance, a suit for the cancellation of a document has been held in Allahabad (I.L.R.V., All., 331) to be a suit for a mere declaratory decree, while elsewhere such a suit has been treated as a suit for a declaratory decree with consequential relief. Similarly, a suit for restitution of conjugal rights has sometimes been held to come under the description of a suit for consequential relief* and at other times under that of a suit† which is incapable of valuation within the meaning of Article 17 (vi) of Schedule II.

The amendments made or proposed.

Now suits coming under the description of suits for declaratory decrees with or without consequential reliefs or for injunctions are mostly suits involving questions of title to property or interests in property and no less complicated than suits for the recovery of possession, and with this in view the Local Legislatures of both Bombay and Madras have introduced provisions which have since been incorporated in the Bill to amend the Court-fees Act pending before the Legislative Assembly. The Bombay amendment is that no relief under paragraph (iv) of section 5 should be valued at less than Rs. 200, while the Madras amendments are: (1) that where consequential relief is claimed with reference to any immovable property, the valuation shall not be less than half the value of the immovable property computed in accordance with paragraph (v), i.e., in a suit for possession; (2) that in suits to cancel or set aside documents or decrees, for money or other property having a money value, the valuation shall be according to the amount or value of the property for which the decree was passed or the document executed.

Criticism of the Bombay amendment

A criticism of the Bombay amendment lies on the surface, namely, that it compels the plaintiff to pay a court-fee on Rs. 200, even in a suit in which the value of the property in dispute, where it is capable of valuation, is less than Rs. 200. The Select Committee which considered the Bill have reduced the figure at which a plaintiff is compelled to value his suit for the purpose of section 7, paragraph (iv), from Rs. 200 to Rs. 100. This has mitigated the force of the above-mentioned objection, but has not removed it altogether.

—and of the Madras amendments.

As regards the Madras amendments, the first speaks of relief being sought "with reference to any immovable property." It does not apply to cases where the relief sought is with reference to property of any other kind, e.g., deposits in banks, debts, or movable property. Moreover, the expression "with reference to" is itself somewhat indefinite. It is not clear whether it is intended to cover a case where a plaintiff sues for a limited interest in immovable property, such as a right of way or some other kind of easement, or for a mere charge upon immovable property as for maintenance. If it is intended to cover such cases, it is easy to imagine instances in which hardship might arise through persons who merely sue for an easement or some other subordinate interest in immovable property being compelled to pay court-fees upon half the value of the property. The question might also arise, in the case of an easement, whether what had to be valued was the dominant or the servient heritage.

The redraft by the Select Committee.

To get over these difficulties the Select Committee of the Legislative Assembly have worded the amendment as follows:—

"In suits such as are mentioned in clause (c), where a decree or order declaring the ownership of or a right to the possession, manage-

* 28, Cal. 567; 28, All. 545.

† 33, All. 767.

ment or income of immovable property is sought, the valuation shall not be less than Rs. 200, or than one-eighth of the value of the immovable property computed in accordance with paragraph (v) of this section."

This, it will be observed, involves a very much lower court-fee than the original amendment, in which the fraction taken was one-half. It may also be suggested that it would be more in conformity with the wording of section 7, paragraph (iv) (c) of the Act if the amendment was drafted so as to refer to cases "where the relief sought involves a declaration of the ownership of or a right to the possession, management or income of property."

The second of the Madras amendments refers to a suit for the cancellation of a decree or document relating to money or to property having a money value and requires the said relief to be valued according to the amount or money value of the decree or document sought to be cancelled. Relief by way of cancellation of the decree seems to stand on the same footing as relief by way of declaration, and as the latter is proposed to be valued at half the value of the property, it seems inconsistent to value suits for cancellation at the full value of the property or amount involved. Further, in several cases, even if the plaintiff should succeed in a suit for cancellation of a decree or document, he may find himself only relegated to his old position as before the decree was passed or the document executed.

It may be added that none of the amendments appears to touch item (d) of paragraph (iv) of section 7 "to obtain an injunction", and a suit for that relief can be valued by the plaintiff at his discretion. Now, if a plaintiff finds that by the operation of the proposed amendments his framing his suit as one for the cancellation of a decree or document is likely to involve the payment of a high fee, he is likely to frame it as a mere suit for injunction. It is the same thing to him whether the relief that he obtains is that a decree which he attacks as invalid is cancelled or that the holder of the decree is prevented from executing it against him. The former relief would involve a suit for cancellation, which he would have to value according to the value of the decree, while the latter might be regarded as one for an injunction, which he could value according to his discretion. It would seem desirable in these circumstances that item (d) be made inapplicable to cases falling under the proposed provision for suits for cancellation.

Suits to set aside attachments.

Suits to set aside attachments form another class of suits, the proper classification of which has given rise to difficulties similar to those arising in the case of suits for cancellation. Where a decree-holder has attached a property as the property of the judgment debtor, a third party claiming to be the owner of the property may put in an objection petition under Order XXI, Rule 58 of the Civil Procedure Code, claiming the property as his, whereupon the Court holds a summary enquiry and decides the claim. The unsuccessful party is then empowered to file a suit under Order XXI, Rule 63, to establish the right which he claims. Paragraph (viii) of section 7 of the Court-fees Act refers to suits to set aside an attachment of land or an interest in land or revenue, and provides that such suits shall be valued according to the amount for which the land or interest was attached, or the value of the land or interest, whichever is less. But an unsuccessful claimant under Order 21, Rule 63, of the Civil Procedure Code, can also frame his suit as one (a) to alter or set aside the summary decision of the court, on which the fee payable would be the fixed fee prescribed under Article 17 (1) of Schedule II, or (b) for a declaratory decree and order restraining the further execution of the decree, whereupon the suit would fall under section 7, paragraph (iv) (c) of the Court-fees Act and the plaintiff would be at liberty to fix his own valuation.

The conflict of decision set at rest by the Privy Council.

Now, the Calcutta High Court has held that a suit of the nature described, viz., a suit under Order XXI, Rule 63, is a suit for a declaratory decree and consequential relief, under section 7, paragraph (iv) (c).* The

* 13 Cal., 162.

Allahabad, Bombay and Madras High Courts have held that such a suit is governed by Article 17 (1) of Schedule II.* The conflict has now been set at rest in favour of the latter view by the authoritative decision of the Privy Council in the case of *Phulkumari* vs. *Ghanashyam*, I.L.R., 35 Cal., 202.

Recommendation of the Civil Justice Committee.

The result of this decision is that the fee leviable is a fixed fee of Rs. 10. With reference to this the Civil Justice Committee have remarked that frivolous suits under Order XXI, Rule 63, "are encouraged by the fact that only Rs. 10 are required as the court-fee for such a suit however valuable the property may be". They add "that, if the court-fee for such suits is raised to half the value of a suit for possession of that property, some check would be found eagainst such frivolous suits."†

Proposal in the Court-fees Amendment Bill.

The Court Fees Amendment Bill before the Legislative Assembly has gone one step further and has enacted in its clause 7 (f) that, in suits to set aside an attachment of any land, building or garden, or of any interest thereon or any revenue, and in suits brought under Rule 63 of Order XXI, the fee shall be paid upon the value of the attached property or according to the amount for the payment of which the property was attached, whichever is less.

The difficulties are still not fully met.

The Select Committee have omitted the reference to suits brought under Order XXI, Rule 63, and the difficulty pointed out by the Civil Justice Committee is not met. Further, the amendment does not refer to suits to set aside attachments of movable properties such as shares in a company or money in deposit in a bank, or jewels, or debts.

The fact is, the term "consequential relief" in section 7 (iv) is too vague.

Before leaving the subject of suits "for declaratory decrees with consequential relief" it may be pointed out that the term 'consequential relief' has not been defined in the Court-fees Act, and by a peculiar form of pleading for "confirmation of possession" which is in vogue in the territories subject to the Patna High Court, and which really is a prayer for possession, even suits for declaratory decrees and possession can be treated there as suits falling under the expression 'consequential relief'—I.L.R., 2 Pat. 198. Apart from this, such an important and difficult suit as one by a reversioner praying that certain transactions by a widow shall not bind the estate and for the appointment of a receiver to preserve the property from waste would be a suit for a mere declaratory decree and consequential relief which the plaintiff can value, at his discretion, at Rs. 10. In fact, the title to a whole *zamindari* can be litigated in a suit in this form.

Suits for accounts.

Item (f) of paragraph (iv) of section 7 refers to a suit for accounts, which is thus one of the classes of suits which the plaintiff is allowed to value according to his discretion. A suit for accounts will include a suit for the taking of accounts on the dissolution of a partnership, on the partition of joint family properties, or on the administration of an estate. It is true that at the time of instituting the suit, the plaintiff may not know the exact amount to which he may be found to be entitled on taking accounts. At the same time, he must be in a position to state the amount due to him at least approximately. What now frequently happens, especially in a partnership action, is that the plaintiff puts a nominal value upon his claim and pays a small court-fee. On this, the court has to take elaborate accounts, and when almost all the work is done, the parties compromise, practically getting the benefit of an adjudication at a nominal cost. It also happens that, as the plaintiff's share cannot be ascertained without the shares of the other partners being ascertained, and without a finding as to the assets and liabilities of the partnership, the other partners take advantage of the figures arrived at and effect a partition outside the Court. Very often, a plaintiff who is only a working partner with a very small share files the suit and accounts have to be taken of transactions running into many thousands of rupees on a plaint on which a nominal duty has been paid.

It is true that section 11 of the Court-fees Act provides that, where in a suit for accounts the amount decreed is in excess of the amount at which the plaintiff valued his relief, the decree shall not be executed until the

* 1 All., 360; 10 Bom., 610; 16 Mad., 288.
† Rport of the Civil Justice Committee, page 339.

difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the amount decreed shall have been paid to the proper officer. But this provision is rendered nugatory in cases where the suit is dismissed on a settlement out of court, or where, even though a decree has been passed, the decree is never executed, but is satisfied without execution. It has been suggested that, where the plaintiff in a suit for accounts has valued his relief at a particular figure, he should not be allowed to get a decree for a higher amount, but as in several cases a plaintiff may *bona fide* not be able to state the exact amount due to him, and as he may not be in possession of the necessary accounts for making a more accurate statement of his claim, it would be unjust to deprive him of the opportunity of getting a decree for the amount justly due to him on payment of the proper court-fee due to the Government. Otherwise, many a defendant would be benefited by his own fraud or by the withholding of accounts from the plaintiff. But it is desirable that, in a suit for accounts, the plaintiff should state in his plaint the approximate value of his claim and pay a court-fee thereon and that no decree should be passed in his favour for an excess unless he pays an additional court-fee on such excess within a time to be fixed by the court.

Again, it has been held in Madras that, where the value stated by the plaintiff is within the pecuniary jurisdiction of a court and where the amount actually found due to him on enquiry exceeds such jurisdiction, the court is competent to pass a decree in his favour for the latter amount (I.L.R., 40 Madras, 1.) This again leads to evasion by removing the fear from the plaintiff of losing any portion of his claim by reason of his under-valuation thereof. In Calcutta it has been held that, where a plaintiff values his suit at an approximate amount and institutes it in a court having limited jurisdiction, he must be presumed to seek a decree for a sum not exceeding the highest amount of its jurisdiction, and that when the court finds that it has no jurisdiction it must return the plaint to the plaintiff. That law might well be made universal.

Abuse of the discretion given to plaintiffs to value suits.

The opinion seems to be widely held that the power given to the plaintiff under sub-clause (iv) of section 7 to put his own value on the relief sought is generally abused, and examples of such abuse abound in the pages of the Indian Law Reports. At the time when this provision was enacted there existed a safeguard against arbitrary and vexatious valuation in section 31 of the old Civil Procedure Code of 1859, read with the last sentence of sub-clause (iv) of section 7 of the Court-fees Act, which until 1891 ran as follows:

"In all such suits the plaintiff shall state the amount at which he values the relief sought, and the provisions of the Code of Civil Procedure, section 31, shall apply as if for the word 'claim' the words 'relief sought' were substituted."

The words underlined were repealed by Act XII of 1891, and, whether these words were sufficient or not for the purposes of authorising courts to check the valuation put by suitors, even those words do not find a place in the present Act.

Power of courts to revise such valuations uncertain.

The question has constantly arisen whether, where the valuation is unreasonably low, it is open to the courts to determine the true value. The Calcutta High Court held that, though the court would be slow to question the propriety of the valuation put by the plaintiff, yet it was open to it to revise the valuation when it was conclusively established that it was arbitrary and improper.* The Patna* and the Allahabad* High Courts took the same view. But the Madras* and Bombay* High Courts have taken

* I.L.R., 40 Cal., 245; I.L.R., 2 Patna, 198; I.L.R., 23 Mad., 490; I.L.R., 33 Bom., 307; 11 C.W.N., 705; I.L.R., 36 All., 500, 24 M.L.J. 233; F.B. 17 Bom. 56.

a different view, and the Privy Council appears to hold, in 23 C.W.N. 753, that the value put by the plaintiff is final. The loss of revenue to the State on this account is probably very large.

Further, for the purposes of appeal to the Privy Council, it is open to the applicant for leave to appeal to His Majesty in Council to prove that the real value of the suit was above the appealable amount of Rs. 10,000 notwithstanding the fact that for the purposes of the Court-fees Act, the value of the suit had been fixed at a sum less than the appealable amount—31 Cal., 301, 15 Madras, 237. In the case of *Babu Lekraj Roy* vs. *Kanhya Singh*, 1. Indian Appeals, 317, Sir James Colville said: "The stamp duties imposed for fiscal purposes are calculated on a certain rule, fixed by law, but the right of appeal depends on the value which is a matter of fact". (Please see in this connection 49 Bom., 149). The parties are thus often permitted to litigate rights of the greatest value up to the highest tribunals on payment of a comparatively low court-fee in the courts of India.

The following are a few illustrations of undervaluation under section 7, paragraph (iv).—

In *Rachappa* vs. *Sidhappa*, 43 Bom., 507, a plaintiff valued his claim for a declaration at Rs. 130 for the purposes of court-fee and at Rs. 69,016-9-0 for the purposes of jurisdiction and pleader's fee. As regards a house worth Rs. 5,000 of which he was in possession, he claimed an injunction, which he valued at Rs. 5. The case went up to the Privy Council, which held that the valuation for the purposes of court-fee could not be interfered with and that such valuation did not affect the real value of the suit for the purposes of appeal.

In I.L.R., 39 Bom., 545, a suit for account and administration of the estate by the court was valued at Rs. 130 for the purposes of court-fee and at Rs. 30 lakhs for the purposes of jurisdiction and pleader's fee. The plaintiff's share of the property was 29/1280ths, and amounted to Rs. 67,968-12-0, on which the court-fee payable was Rs. 1,275, while the plaintiff in fact paid only Rs. 10. *Held* that the plaintiff had a right to do so.

In 27 Mad., 480, a suit for cancellation and delivery of a mortgage bond for Rs. 4,000 was valued by the plaintiff at Rs. 50.

The remedies proposed by the Court-fees Amendment Bill.

It is unnecessary to multiply instances of the kind. Clause 8 of the Court-fees Amendment Bill now before the Assembly is intended to remedy this defect and provides that if a court "decides that an insufficient fee has been paid on a claim" it may require a further payment. Having regard to the already existing provision for assessment "according to the amount at which the relief sought is valued in the plaint" it would seem to be doubtful, especially in view of the rulings to which reference has been made, whether this wording will suffice to effect the purpose in view.

Suits for money and movable property having a money value present no difficulty in valuation.

Turning now to suits which are less difficult of valuation, it is found that suits for money are directed to be valued according to the amount claimed. There is a conflict of decisions as to whether this expression 'amount claimed' will, in the case of an appeal, include interest accruing subsequent to the date of the plaint, and this conflict is now rightly sought to be set at rest by the amending Bill before the Legislative Assembly. Suits for movable properties having a money value are also to be valued according to the market value.

But suits for immovable property do. Method of valuation under the Act not uniform.

In regard to suits for the possession of immovable property, however, the Act lays down different criteria for valuation under different conditions.

A permanently settled estate or a definite share of it separately assessed and entered in the Collector's Register is to be valued at 10 times the annual revenue, a non-permanently settled estate or a definite share of it separately recorded as paying revenue to the Government at 5 times the annual revenue; a revenue-free property at 15 times the nett profits of the preceding year, and where no such nett profits have arisen, with reference to the value of similar land in the neighbourhood; part of a revenue-paying estate not separately assessed, at the market value of the land; houses and gardens also at the market value.

The result is that houses and gardens and parts of zamindaris or ryotwari lands which are not separately registered in the revenue accounts and separately assessed, and inam lands on which no nett profits have arisen during the preceding year, are all valued according to the market value, while lands whether permanently or temporarily settled not falling under the above categories are assessed on a multiple of the land revenue.

The first question which arises in connection with these rules is whether the valuation of revenue-paying lands should be made on a different basis from that of other immovable properties. Consistently with the valuation of suits for money and movable properties, the valuation of suits for land also should *prima facie* be according to the market value. That is the only fair principle of assessment.

Disadvantages of assessing certain suits for land on basis of a multiple of the land revenue.

The disadvantages of the present method of valuation on the basis of assessment are these:

(i) It introduces in the case of suits for immovable property a system of valuation altogether different from that in force in case of suits either for money or for movable property.

(ii) Owing to the existence of different rates in different localities the varying ratios of value to assessment make the fees arbitrary and uneven.

(iii) In several instances, the matter in litigation may be not a right to the possession of the immovable property itself, but some right or interest therein which is obviously less valuable than the property. On the other hand the value of the right or interest sometimes exceeds the valuation of the land according to the assessment basis. For instance, in a case reported in I.L.R., 45 Madras, 246, a plaintiff as reversioner sued for possession of certain lands from the defendants who claimed the same under a sale deed executed by a widow. The sale deed was for Rs. 8,000. But the suit fell within the jurisdiction of a District Munsif's court on account of the valuation of the lands according to the assessment basis. On appeal the plaintiff obtained a decree for possession subject to the condition of payment to the defendants of a sum of Rs. 3,881-4-0. Against this decree, the defendants filed a second appeal; and the plaintiff filed a memorandum of objections objecting to the decree of the Subordinate Judge in so far as it directed her to pay Rs. 3,881-4-0. She had to pay *ad valorem* duty on the sum of Rs. 3,881-4-0, although for her suit for possession of the whole of the lands, which were admittedly worth Rs. 8,000, she had paid a less court-fee in the court of first instance. Similarly, the defendant, who contested the decree for possession must have paid a court-fee which was disproportionate to the relief he sought.

(iv) Part of an estate, whether permanently or temporarily assessed, which part is not itself separately rcorded in the revenue registers, has to be valued for the purposes of court-fee on its market value. In other words, a suit for a definite part of a survey field which is not sub-divided has to be valued according to the market value of the land, and sometimes this may exceed the value of the whole on the basis of assessment. This "absurdity", as Mr. Justice Coutts Trotter called it, in the case reported in 1916 (i) Madras Weekly Notes, page 325, may sometimes result in a suit for recovery of a whole survey number going into a District Munsif's court, whereas the suit for a portion of it may have to go to a Subordinate Judge's court.

(v) The valuation of land according to assessment in suits for possession offers temptations for evasion of the court-fee in regard to other classes of suits. Thus, under sub-clause (x) of section 7, a suit for specific performance of a contract of sale has to be valued according to the amount of the consideration. It seems inconsistent to say that a suit for the specific performance of a contract of sale regarding land shall pay a different court-fee from a suit for possession of the land. As ordinarily the sale price of land is more than five or ten times the assessment, suitors generally tack on a prayer for possession to a prayer for specific performance. The question has arisen, and has led to a conflict of judicial decisions, whether, where such a prayer for possession has been tacked on

to a prayer for specific performance, the court-fee should be paid as on a suit for specific performance or as on a suit for possession. In 45 M.L.J., 431 (47 Mad., 150), it was held that a suit for specific performance should be valued as such though a prayer for possession may be added to it. The Allahabad High Court has also taken the same view (38 All., 292), but a different view has been expressed in other High Courts—(1911) 11 Indian Cases, 228 (Calcutta); (1921) 60 Indian Cases., 512 (Lahore).

(vi) Under section 110 of the Code of Civil Procedure, in the case of appeals to the King in Council, the amount or value of the subject matter of the suit in the court of first instance must be Rs. 10,000 or upwards and the amount or value of the subject matter in dispute on appeal to His Majesty in Council must be the same sum or upwards, or the decree or final order must involve directly or indirectly some claim or question to or respecting property of like amount or value. It has been held by the Privy Council that the value of the property for purposes of this section is the selling or market value.

It is of interest to note in passing that, in the Stamp Duty Act of 1867, while the market value of land was taken to be equal to certain multiples of the assessment, it was so taken only "unless and until the contrary is proved" and that it was only when the Court-fees Act of 1870 was passed that these words were omitted as being liable to lead to litigation.

Objections to the adoption of a market value basis for these suits answered.

The reasons urged against the assessment of the fees on suits for land like those on other suits with reference to market value are that the land revenue assessments, which are the result of a very elaborate process of valuation, are roughly proportionate to market value: that it would be extremely difficult to ascertain the real market value in individual cases; and that any increase in the fees would disturb the balance of taxation to the disadvantage of the landed classes.

Whatever may have been the case in 1870, it is a matter of common knowledge at the present day that the land revenue assessments have long ceased to be proportionate to market value and the rates taken in the Court-fees Act lead no relation to it whatever.

It is undoubtedly a long and tedious business to ascertain the market value of land in many cases, especially when no transactions are recorded, but the record of transactions is growing every year, and valuations for other purposes are constantly being made. Moreover, when the land is the subject of a suit, more often than not it is because it has been let or sold and a value determined; nor are the parties to the suit ignorant as to its value. Annual or capital values of land are ascertained and assessed for similar purposes in other countries, and there is no reason why they should not be so ascertained and assessed in India.

As for the plea on behalf of the landholder, it must be pointed out, in the first place, that the fee is in the main a payment for service rendered. The service rendered in the case of a suit for land is on the average much more than in the case of other suits owing to the complexity of the issues raised. The question is not therefore one of relieving the landholder of a burden, but of letting him continue to enjoy a service at less than cost while other litigants make up the balance. Even were the case otherwise, the great extent to which of recent years taxation has been shifted from the land to trade and commerce would tend to deprive this plea of any validity.

On the whole, and in view of the grave anomalies arising out of the present situation of affairs, it would appear clear that the time has come for making an end of the present arbitrary method of calculating the fees due on suits for land.

Suits incapable of exact valuation and "luxury" suits.

Even where suits are incapable of exact valuation, some distinction should be made between suits which are valued for purposes of jurisdiction at a lower or higher figure so as to bring them within the jurisdiction of an inferior or superior tribunal or to increase the pleader's fee payable thereon. In the case of suits falling under Article 17 of Schedule II, the local Legislature of Madras classified them according to the machinery, i.e., the grade of courts which they set in motion and made them pay according to the value fixed for them for the purposes of jurisdiction. The rates were fixed on a progressive scale, Rs. 15 in the court of a District Munsif, and Rs. 100 or Rs. 500 in the court of a Sub-Judge or District Judge according as the value for purposes of jurisdiction was below or above Rs. 10,000. These high rates can certainly be justified not only on the ground that, having regard to their real value, the suits on which they are levied are capable of paying the same, but also on the ground that the suits instituted under the Article are frequently speculative suits filed by litigants having a lively sense of the weakness of their cause and therefore unwilling to risk a larger initial outlay by choosing a more legitimate form of suit. It was undoubtedly suits under this Article and suits coming under paragraph (iv) of section 7 that the Hon'ble the Law Member of Madras had in mind when he referred to "luxury suits" in his speech dated 18th March 1925 in the Madras Legislative Council, and the reason why they are luxury suits is that, but for the fact that the court-fee payable on them is so low under the existing law, several plaintiffs would probably not file them at all.

Another class of luxury suits which take up a disproportionate amount of the court's time comprises suits relating to honours and dignities in a temple or the precedence in the distribution of such honours and dignities; suits relating to membership of castes or excommunication from castes; suits relating to rituals or ceremonials such as reciting mantrams or *prabandhams* in a temple, and other suits of a similar nature. The character of these suits may not be plain from the allegations in the plaint as very often the plaint in such cases is framed as one for the recovery of a few annas worth of emoluments like cakes, etc., but will become clear at the time of the framing of the issues. A special provision might be made whereby the court should be empowered to exact such additional fees in respect of these suits as would be necessary to make up a minimum fee of Rs. 100 in a Munsif's court and Rs. 500 in the court of a Subordinate Judge or a District Judge.

Certain classes of scheme suits under section 92 of the Civil Procedure Code also now escape with very light taxation. In spite of the safeguards provided in the form of sanction of a competent authority, suits of this nature are often brought for factious reasons and are fought with great tenacity. They are generally very intricate and involve prolonged enquiry and investigation of accounts. They are usually financed, not by individuals but by bodies of men or portions of the community. They often involve properties of large value. They are triable only by the superior civil courts. In the case reported in 43 Madras Law Journal, 656, the plaintiff in a scheme suit claimed, among other things, a direction to the defendant to deposit Rs. 1,24,000 due from him to the trust. This was regarded as a prayer for taking accounts incidental to a scheme suit. For these reasons it seems desirable to bring suits of this kind within the scheme of *ad valorem* assessment though, in view of the fact that their ostensible object is the better administration of public charities, a comparatively low rate of fee may be charged.

The desirability of a schedule of valuations.

Enough has been said to show that an urgent necessity exists in numerous cases for a revision of the scheme of valuation laid down by the Act, and the question arises whether this can be effected by further additions of clauses or sub-clauses to section 7, which is already very unwieldy. A more satisfactory course would appear to be to prepare a separate schedule on the lines of that appended to the Indian Limitation Act, in which provision was made for as many as possible of the different types of suits and appeals that commonly arise in civil courts, and a method of valuation was prescribed for each. In prescribing such method of valuation, the subject matter of the suit and not the actual form of the prayer in the plaint should be made the criterion. On all suits capable of valuation, including several of the suits which are covered by paragraph (iv) of section 7 and Article 17 of Schedule II of the Act, an *ad valorem* fee should be levied. The necessity for nice distinctions between suits for declaratory decrees where consequential relief is claimed and for declaratory decrees where no consequential relief is claimed and suits where it is not possible to estimate at a money value the subject matter in dispute should be put an end to by the avoidance of such general expressions. The only distinction recognised for the purposes of court-fees should be that

between suits which are named specifically in the schedule and other suits not so named. The former would include most of the suits of which the subject matter was capable of valuation, and the latter most of those of which the subject matter was incapable of valuation, such as suits for recovery of a wife or child, suits to restrain a libel, and so on. No discretion should be given to the plaintiffs to value any class of suits on the ground of either the difficulty or the impossibility of such valuation or on any other ground. Even in respect of suits for which a fixed fee might be prescribed, the fee should be made to vary according to the forum of institution or the nature of the suits. A tentative schedule of suits prepared in accordance with the above-mentioned principles is appended. It is not exhaustive, but covers most of the suits that ordinarily arise in civil courts, and may be treated as the basis for discussion.

QUESTIONS OF RATES.

The question whether the scale should be progressive, proportionate or regressive.

The next question that falls for consideration is that of the fixing of the rates in the schedules, of which Schedule I deals with *ad valorem* fees and Schedule II with fixed fees. Before going into individual cases, it may be useful to examine certain general questions arising in this regard. The present scale of fees payable under the Court-fees Act, 1870, on plaints and memoranda of appeal is not progressive, but is either regressive or degressive. The rates do not increase proportionately to the amounts involved in the suits, and after a certain stage the amount of court-fee to be levied remains stationary owing to the imposition of a maximum. It has been suggested in some quarters that the scale should be made progressive throughout and in others that the maximum limit should be abolished. In three provinces—Madras, the Punjab and Bihar and Orissa—effect has been given to the latter suggestion in provincial legislation.

A progressive scale would be inequitable.

The first of these suggestions is based on the ability principle. A little reflection will show, however, that there is no parallel between the application of this principle to a tax like the income-tax or succession duties and its application to the case of court-fees. In the two former cases the person who pays the tax has the ability to pay because he possesses the property. In the latter it is frequently because he has been dispossessed of it that he has to sue. Moreover, the payment of a court-fee is, in the main at any rate, a payment for service rendered. Again, the ability principle is one to be applied, not to a single tax, but to a system of taxation as a whole. As Dalton says, " the inequity of one tax, as between different tax-payers, may be cancelled by that of another. There may be inequity in the parts, but equity on the whole."* It is thus clear that progressive graduation in the case of court-fees would be unjustifiable on principle while it is very probable that it would put such a check on litigation for large amounts that it would actually be unprofitable.

The retention of the maximum limit is desirable.

As regards the maximum limit of court-fees to be levied on suits, it may be mentioned that, during the interval of three years between Act XXVI of 1867 and the present Court-fees Act VII of 1870, there was no maximum limit to the amount of court-fees charged on plaints. Prior to 1867 such a maximum had existed, but the Act of 1867 had abolished it. The experience gained during the interval in question was that the unlimited scale operated as an absolute prohibition of litigation of cases involving large amounts.† And it was therefore thought desirable to revert to the principle of the former law. It does not appear whether these facts were considered by the provincial legislatures which have recently removed the maximum.

Some cases already dealt with under the head of valuation.

Reference has already been made to the classes of suits coming within the purview of section 7, paragraph (iv) in which, owing to the discretion given to the plaintiff to put his own valuation on them, the court-fee paid is generally the minimum. Suits of this nature are the resource of the litigious and of those who wish to vex or intimidate their neighbours or relatives. Illustrations of the way in which these suits are under-valued have already been given. A substantial percentage of contested cases falls under this category.

* Dalton, Inequality of Incomes, page 73.

† Proceedings of the Council of the Governor General, 1869, page 286.

Suits referred to in Article 17 of the second schedule also escape with very light taxation, since under the Imperial Act of 1870, they have to pay only a fixed fee of Rs. 10.

In the schedule annexed, proposals are made for the levy of a proper court fee on suits falling under the above-mentioned categories.

Civil revision petitions.

Under the Act, Civil Revision Petitions are required to pay a court-fee of only Rs. 2 under Schedule II, item I (d), whether they are petitions under section 115 of the Code of Civil Procedure or under section 25 of the Provincial Small Cause Courts Act. In many cases, a revision petition is put in to obtain a relief which, if it were sought by way of appeal, could only be obtained at the cost of a considerable initial court-fee. Most revision petitions are of a speculative character, as the prospect of a revision petition succeeding is generally small, but they are not less important to the litigant and do not take up less time of the High Court than second appeals. There is no reason for taxing them so lightly, and in 1922 several local legislatures increased the rates of court-fees on them. The Bombay Legislature generally raised the fee on all revision petitions from Rs. 2 to Rs. 4, while the Madras, Bengal and Bihar and Orissa Legislatures increased the rates of fee payable on petitions under section 115 of the Civil Procedure Code from Rs. 2 to Rs. 5 in cases in which the value of the suit or proceeding to which the order sought to be revised related did not exceed Rs. 1,000, and to Rs. 10 when it exceeded Rs. 1,000, while they left the old fee of Rs. 2 untouched in other cases. The result is that revision petitions against Small Cause decrees which are put in, not under section 115 of the Civil Procedure Code, but under section 25 of the Provincial Small Cause Courts Act, pay only Rs. 2 even in these provinces. In Burma, revision petitions in Small Cause suits pay the fixed fee of Rs. 2 when the subject matter in dispute is less than Rs. 25, but an *ad valorem* fee as on an appeal if it is more than Rs. 25. In the Punjab also, applications for revision of Small Cause decrees have to be stamped as appeals. A similar provision in all provinces, or at least an increased rate on all revision petitions in Small Cause suits involving sums of over Rs. 100, seems to be justifiable on principle.

Detailed calculations of receipts and charges made in respect of proceedings in the High Court of Madras for 1923-24 led to the result that the probable deficit due to Civil Revision Petitions was about Rs. 30,000, and that the net loss on each petition was Rs. 30. The actual loss per petition was in fact greater because many revision petitions never came into court at all, and the above figures take account only of those that did. It is probable that an examination of the figures in other provinces would lead to similar results. The conclusion is that Civil Revision Petitions and particularly those in Small Cause suits in the High Courts are too lightly taxed and might well have their fees enhanced.

Applications under the Guardi n and Wards Act, the Trusts Act and the Companies Act.

Illustrations of other cases which are lightly taxed are—

1. Applications under the Guardian and Wards Act, 1890, for the appointment or removal of guardians.

2. Applications for opinion or advice or for discharge from a trust or for appointment of new trustees under section 34, 72, 73 or 74 of the Indian Trusts Act.

3. Applications for the winding up of companies under section 166 of the Indian Companies Act, 1913.

All these involve more or less elaborate enquiries and adjudication of matters which are of undoubted importance to the suitors. The Amending Act of the Bombay Legislature in 1922 made all these applications pay a fixed fee of Rs. 10. In the County Courts in England applications of the first and third classes pay a fee of £1 10s, besides another equal fee at the hearing, while applications in respect of trusts do not seem to be cognisable.

Claim petitions under Order 21, Rule 58, Civil Procedure Code.

The Bombay Amendment Act, 1922, levied a special fee of Rs. 10 on claim petitions under Order 21, rule 58 of the Civil Procedure Code. Considering that the claimant is a stranger who comes forward to the court to complain of an illegal attachment and that, if unsuccessful, he will have to pay a regular court-fee on his plaint, there does not appear to be any good ground for making him pay at the outset a heavy court-fee on his application.

Applications to set aside *ex parte* decrees and similar orders.

Applications to set aside *ex parte* decrees, orders dismissing suits for default and orders of abatement of suits can well pay a slightly higher fee than at present. Applications to set aside *ex parte* decrees are often put in by dishonest defendants who had no defence on the merits and for that reason have allowed the suits against them to proceed *ex parte*, but who want to delay the execution of the decree against them or to harass the plaintiff by vexatious pleas of non-service of summons or other reasons for non-attendance at the hearing. When contested, these applications often involve time and trouble. Orders rejecting them are regularly appealable. A reasonable court-fee on these as well as on applications of the other classes mentioned above would tend to check the reprehensible practice which exists in several courts of dismissing or decreeing suits in the absence of parties at the fag end of a quarter for the purpose of showing numerical disposals. They may pay an *ad valorem* fee, say, of Re. 1 per Rs. 1,000, subject to a minimum fee of one rupee in a District Munsif's Court and Rs. 2 in a Sub-Court or District Court, a fraction of a rupee being treated as a full rupee.

Applications for interlocutory orders.

Applications for interlocutory orders under Orders 38 and 39 of the Civil Procedure Code, as for arrest or attachment before judgment or for temporary injunctions or for the appointment of receivers under order 40 of the Code, may well be made to pay a higher court-fee than the fee on an ordinary application which they now pay; such applications are often made by parties for the purpose of obtaining a strategic advantage over their opponents and orders passed on them are appealable under Order 43. In the County Courts in England, they pay a fee of *5s.* which, considering the general low level of court-fees there, is comparatively high. In Chapter 45 of their report, the Civil Justice Committee have animadverted on the freedom with which several courts grant such interlocutory orders and state that "a lax practice in granting such orders is an open invitation to blackmail." These applications might well be made to pay Rs. 5 or Rs. 10 according to the grade of courts in which they are made, subject to the limitation that, in suits of small value in District Munsifs' Courts, the party making the application might pay half the court-fee on the plaint or Rs. 5, whichever is less.

Applications for compensation for arrest or attachment before judgment.

Applications under section 95 of the Civil Procedure Code for compensation for arrest or attachment before judgment or for a temporary injunction on insufficient grounds might also pay an *ad valorem* court fee as on a plaint for the amount claimed. The orders passed on those applications are appealable and bar fresh suits for compensation for such arrests, etc. There is no reason why they should pay a fixed fee as on an ordinary application.

Certain applications under the Provincial Insolvency Act.

Applications under section 26 of the Provincial Insolvency Act by a debtor for compensation against an unsuccessful creditor for a declaration of his insolvency, and applications claiming title or preference in proceedings under the Provincial Insolvency Act may also be made to pay a higher fee than they do now. They are practically suits, and the orders made in them are appealable, and there is no reason why they should escape with the fee on an ordinary application which is now payable on them.

Applications for leave to file agreements.

Applications under rule 17 or 20 of the second schedule of the Code of Civil Procedure to file in court an agreement to refer to an arbitration or an award, are required by law to be registered and filed as suits. They may relate to properties and interests of very great value, and under section 7 (x) of the Court-fees Act, a suit to enforce an award is liable to pay court-fee according to the amount or value of the property in dispute. Again, under Order 36, Rule 1 of the Code of Civil Procedure, parties claiming to be interested in the decision of any question of fact or law may enter into an agreement that, on the finding of the court on such question, money or property shall be delivered by one party to another, or one party shall do or refrain from doing a certain act, and may file such an agreement in court for decision. Thereupon, the court is required to proceed with the case as if it were a suit instituted in the ordinary manner and to pronounce a judgment and pass a decree. A fixed fee of Rs. 10 is now payable in such a case, but the estimated value of the amount of property to be delivered or the act to be done or refrained from may often far exceed the amount on which Rs. 10 would be the proper fee on an *ad valorem* scale. The Madras Amendment Act raised the fees in the above-mentioned cases to Rs. 15, and Rs. 100, according to the court to which the application is presented. It would seem that in the other provinces these applications now escape with too light a fee.

In some other cases, the existing law requires some relaxation in favour of the litigant. In I.L.R., 43, All., 56, a plaintiff who had sued on a mortgage bond had obtained a personal decree against the defendant and no charge upon the mortgaged property. There was an appeal by him praying that the amount might be charged on the mortgaged property, while there was another appeal by the defendant objecting to the personal decree against him. The appellate court dismissed the plaintiff's appeal and allowed the defendant's appeal, with the result that the plaintiff's suit was totally dismissed. Against the decisions of the appellate court, the plaintiff preferred two appeals, and it was held that both of them should pay *ad valorem* fees. Tudball J., said: "I can find nothing in the Act which empowers this court to consolidate the two appeals into one and to charge one court-fee. It is a pity that this cannot be done, as it seems unjust to make a man pay double court-fees because under the law it is necessary for him to file two separate appeals. Still, we must take the law as it stands and until it is amended, the law demands that on each appeal the full court-fee should be paid."

Applications for review of judgment.

Under Articles 4 and 5 of Schedule I to the Court-fees Act, applications for review of judgment pay the fee leviable on the plaint or memorandum of appeal, or one-half of such fee, according as they are filed on or after the 90th day from the date of the decree, or before the 90th day. In Calcutta and Allahabad, it has been held that, even in cases in which review is sought in respect of part only of the decision, the full court-fee payable on the plaint should be levied, while in Madras and Bombay, the court-fee payable is calculated only on the amount or value of the claim in regard to which relief is sought. It would seem equitable to substitute for the existing words in the third column of the schedule opposite Articles 4 and 5, the following words, viz., "The fee leviable on a plaint or memorandum of appeal for the relief sought". The rates of fee also seem to be too heavy. They might be reduced to one-half and one-fourth.

Election petitions.

Another class of cases with which the civil courts are not directly concerned, but in which taxation at rates similar to those imposed in suits seems to be desirable is to be found in petitions contesting elections to the local and central legislatures. Petitions relating to the validity of elections to the various local bodies also come up before courts. The purity of elections and the return of suitable candidates to the legislative and local bodies are no doubt a primary concern of the State, which should therefore be vigilant in seeing that elections are not vitiated by imperfect electoral registers, serious irregularities at elections or wholesale bribery or intimidation. At the same time, it cannot be denied that very often election petitions are the result of personal or communal rivalry, and actuated, not by a desire to uphold the purity of elections, but by malice or spite. Oftentimes, when the State has no interest in questioning an election in the public interest, a party feels called upon to contest it and feels benefited when he succeeds. When election petitions come to court, they are generally fought out with great animus, and in the case of elections to the legislatures, they have to be heard and decided by a tribunal of three Judges, who are either Judges of the High Court or qualified to be such Judges. While they cost appreciable sums to the State, they contribute nothing towards the defraying of those costs. It may not be possible to make them pay for themselves, but they should certainly be taxed sufficiently to prevent their becoming vexatious.

THE CASE OF THE CHARTERED HIGH COURTS.

Section 4 of the Court-fees Act impliedly excludes from the operation of the Act Chartered High Courts in the exercise of the following jurisdictions:—

(1) Ordinary original civil jurisdiction.
(2) Ordinary original criminal jurisdiction.
(3) Matrimonial jurisdiction.
(4) Admiralty jurisdiction.
(5) Appellate jurisdiction in the exercise of the above jurisdictions

The other High Courts are not excluded from the operation of the Act. So far as the Chartered High Courts are concerned, the fees payable on the Original Side are fixed by rules passed under section 107 of the Government of India Act. Apart from the variations which exist among these High Courts themselves, they are, as compared with the fees levied under the Court-fees Act in the courts in the mufassal, exceedingly low. In Madras the fees on the Original Side were recently increased, but even the increased fees are only Rs. 150 at the time of the institution of a plaint in a suit of a value up to ten thousand rupees and twenty rupees for every five thousand rupees of excess value. In Bombay the institution fees still stand at the fixed rate of twenty rupees for all kinds of suits, while in Calcutta the fee, though recently raised by 50 per cent, is only Rs. 15. The result is that a person who has to file a suit in a mufassal court in the Madras Presidency has to pay on a suit for Rs. 10,000 a court-fee of Rs. 712-7-0, while a litigant who has to file a similar suit in the Original Side of the Madras High Court has to pay only Rs. 150. For a suit of the value of lakh of rupees, he has to pay in the mufassal Rs. 2,062-7-0, while in the High Court he has to pay only Rs. 510. In Bengal and Bombay, the disproportion is very much greater. It is true that in all these courts various other fees are payable during the progress of the suit such as hearing fee, exhibit fee and so on, and that eventually an amount is paid by the litigant which is much more considerable than that represented by the institution fee paid by him at the outset. In spite of this, an actual comparison of the court-fees paid on the Original side of two High Courts in a few typical cases shows that the total sum paid is considerably less than the amount levied under the Court-fees Act in the mufassal courts, except in the case of certain suits already referred to in which the plaintiff is allowed to pay court-fees on the valuation put by him at his discretion or a fixed fee of Rs. 10. This disparity is specially felt in the case of the other civil courts situated in the Presidency towns such as the Presidency Small Cause Courts and the City Civil Court in Madras, which levy very much higher fees on the institution of suits than those levied on the Original Side, the rate in the former being 12½ per cent up to Rs. 500, and 6¼ per cent on the excess over Rs. 500, and that in the latter the same as under the Court-fees Act. If the agency which the suitor sets in operation is to be the criterion on which a fee should be levied, it follows that, the agency of the High Court being much more expensive and much more efficient than that in the mufassal, he should pay, if at all, a higher court-fee than a suitor in the mufassal. Grounds such as, that probates and letters of administration are more common in the Presidency towns than in the mufassal, and that the existence of a dual agency of legal practitioners in the Presidency towns increases the cost of the litigant, do not really justify this arrangement, especially as appeals to the High Court from the courts in the mufassal pay fees according to the scale applicable to the mufassal courts. That these High Courts are the successors of the Supreme Court which levied no institution fees and that they are empowered under section 107 of the Government of India Act to levy such fees as they with the approval of the Central Government in the case of the Calcutta High Court and of the Local Governments elsewhere may deem fit, may explain but not justify this differentiation. In the interest, not only of uniformity of practice, but of fairness to the mufassal litigants, it seems necessary that the scale of fees in the High Courts should be brought at least to the level of the scale of fees in the mufassal and that, if possible, the system of levying court-fees in the Chartered High Courts and in other courts should be assimilated.

Proposals.

The previous proposals summarized.

In the foregoing discussion it has been recommended, firstly, that some recognition should be given to the principle which is recognised by the English law of basing the fee paid on the time taken up by the court; in the second place, that a comprehensive review should be made of the provisions of the Act relating to valuation and a schedule of valuations drawn up; in the third place that the rates of fee imposed on the valuations so arrived at and in cases that are not capable of valuation should be examined with reference to certain principles laid down and that the rates themselves should be revised.

Uniformity of law desirable.

It may now be added that, at least on the general principles of assessment and the procedure and methods of realising court-fees, uniformity is desirable among the various provinces. In their letter No. F 301-23, dated 4th June 1923, to the Local Governments, the Government of India were inclined to take this view, and all the local Governments were in agreement with them, except the Government of the United Provinces who, while agreeing to central legislation on the subject of the principles of assessment, recommended, in the first instance, the exclusion of section 7 (v) of the Act relating to the valuation of lands, and finally of the whole of section 7, which they thought was intimately connected with the rates in the schedules. In the amending Bill before the Central Legislature introduced by the Government of India, section 7 (v) and the schedules are left untouched, while various amendments are sought to be made in the other principles of assessment and procedure, included in the body of the Act.

Even as regards the rates, it is permissible to deprecate absence of uniformity, not only in the interests of the certainty of the law and the mutual assistance rendered by the decisions of the various High Courts, but for the purpose of safeguarding provincial revenues, which, in the case of suits relating to properties situated in different provinces, may become diverted to the province which may happen to levy the lower court-fee. And any attempt at uniformity that is made should certainly include the Chartered High Courts, also. Under section 131 (1) of the Government of India Act, the Central Legislature has power to undertake such legislation as regards them.

Suggested provision for the levy of deficient court-fee even after disposal of case.

Before leaving this part of the subject, reference may be made to a further suggestion that has been put forward, namely, that the law be amended so as to make it competent for the courts to levy any deficiency in the court-fee paid that may come to their knowledge even after the disposal of a suit or proceedings, provided that a certain period, which may be prescribed as six months, has not elapsed. At present, all the provisions enabling the courts to collect additional fees payable under the Act, such as sections 10, 12 and 28, apply to pending cases and not to decided cases. The absence of provision for recovery in decided cases appears to be a defect in the law which should be rectified. The method of collection of the deficient fees might be through the passing of a decree in favour of the Government for the sum due, to be realised in the same way as court-fees in pauper suits, as a first charge on the subject-matter of the suit.

Complete revision of the Act necessary.

If the above suggestions are approved, it would seem desirable that the Bill now pending before the Legislative Assembly should either be referred back to the Select Committee or that a fresh committee be appointed to prepare a more comprehensive Bill for the complete revision of both the Act and the Schedules to the same.

Miscellaneous suggestions.

Desirability of an audit of receipts.

Another suggestion which has been made is that there should be a periodical audit of receipts from court-fees with a view to ensure that the fees are not allowed to be evaded and, what is equally important, that stamps once used have been duly cancelled so that they cannot be used again. In various provinces there are circulars in existence requiring periodical inspection of record rooms for the purpose of examining whether the rules for the cancellation of court-fee stamps are properly carried out or not. For instance, in the Stamp Manual of the Central Provinces, it is found that district officers are required by the rules under the Court-

fees Act "to inspect the district record rooms periodically and satisfy themselves that the rules for the cancellation of court-fee stamps are properly carried out. In the course of these inspections, any failures to observe the provisions of the stamp law with regard to the stamping of applications, etc., should be noticed and brought home to the responsible officials." In Bengal, certain orders passed in the years 1876 and 1880 appear to be still in force and are to the following effect:—

(i) Government having directed the Inspector-General and Inspectors of Registration to examine record rooms of the various courts in the mufassal in order to see how far the rules and instructions on the subject of the printing, custody and sale of stamps are carried out, every assistance should be afforded by judicial officers to such officers in the discharge of their duties.*

(ii) Government having ordered that on the discovery of any irregularities in respect of printing or otherwise defacing court-fee stamps, the inspecting registration officer shall at once bring the matter to the notice of the presiding officer of the court, such latter officer should enquire into the matter at once and thus trace the person who is responsible for the omission pointed out by the inspecting officer.†

The Allahabad and Patna High Courts have a special officer called the Stamp Reporter whose duty it is to see that proper court-fees have been paid not only in the High Court, but also in the courts below in all cases. It seems to be his duty to examine the files of the subordinate courts in the cases that come up to the High Court and to report any deficiency discovered. The court then takes steps to recover the deficiency, either by refusing to hear the appeal, when the appellant is at fault, or, by refusing to allow execution when the respondent is at fault, till the deficiency is made good. The power of the court to do this does not appear to have been challenged so far as is known, but it might be well that any room for doubt on the point should be removed by suitable amendments to sections 12 and 28 of the Court-fees Act.

In some provinces, however, for instance, Madras, such supervision as exists over the proper administration of the Court-fee Law is exercised over the subordinate courts in a district only by the District Judge, who at the time of the inspection of the subordinate courts under him is expected to examine the registers kept in the court. So far as the district courts and courts in the Presidency towns are concerned, there appears to exist no corresponding arrangement. In the very nature of things, the inspection by District Judges, being made more in the interests of proper administration of justice than in the interests of the revenues of the State, cannot be regarded as a substitute for a regular audit of the receipts from court-fees. In most courts, judicial officers are too hard-worked themselves personally to attend to the proper payment of court-fees or the punching of court-fee labels by the ministerial officers placed under their control. In the Madras Presidency it seems to be the case in several courts that cancellation of court-fee labels takes place only just before the records are sorted for the purpose of being despatched to the district courts for safe custody or on the eve of an impending inspection by the District Judge. There can be no doubt that a periodical audit would be useful in bringing to light irregularities in the administration of the Court-fee Law and leakages that exist.

Which should extend to stamp duties also.

Such an audit when it is undertaken should include not only the administration of the Court-fees Act but also the administration of the Indian Stamp Act. As regards the latter, section 73 of the Indian Stamp Act already provides:

"Every public officer having in his custody any registers, books, records, papers, documents or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person authorized in writing by the Collector to inspect for such purpose the registers, books, papers, documents and proceedings and take such

* G.L. No. 16 of 18th September 1876.
† G.L. No. 5 of 21st April 1880.

notes and extracts as he may deem necessary, without fee or charge." But this provision does not appear to have been very much used in the past. In his evidence, Sir T. Desika Achariyar hinted that some courts deliberately connived at evasions of stamp duty and penalty which they regarded as being unduly harsh and that it is common practice for courts to be lenient in the admission of unstamped or insufficiently stamped documents. In circumstances like this it would seem not unlikely that a thorough enquiry by an officer who had an adequate training both in the law of stamps and court-fees and in accounts procedure might yield very material results. It is true that it is stated that in Bombay an audit was made, but did not reveal any serious loss, but information is lacking as to the details, and in any case the conditions are not the same in all the provinces. As a preliminary, however, an audit might be made in one or two districts in each province in the first instance and on the results of such an audit a decision might be arrived at as to whether a general audit should be instituted or not.

Probate duties should be separated from court-fees.

The Court-fees Act deals with three distinct subjects—

(1) Fees payable in courts.

(2) Miscellaneous fees payable in public offices.

(3) Duties payable on probates and letters or certificates of administration and on succession certificates.

Whatever the reason for clubbing these three together in the year 1870, such reasons no longer exist now. In particular, there are obvious advantages in keeping the third class of fees, namely, those derived from probates and letters or certificates of administration and succession certificates, distinct from the other two. They are in reality duties on succession and the fact that they are payable in the form of court-fees should not be allowed to obscure their real character. They are in no sense payments for services rendered, and that is the reason why they have not been discussed in this monograph.

So also should fees on applications to Revenue officers and others—the nature of these fees.

As regards fees payable to revenue and other officers there may be some difficulty in bringing them under the Stamp Act, because they are essentially different from the taxes levied under the latter Act, in that they are in the nature of payment for services sought for. But they are out of place in a piece of legislation which ought to be intended purely to regulate fees leviable in courts of law.

The following are instances of non-judicial fees leviable under the Court-fees Act:—

(1) Fees payable on certain applications coming under Article 1 of Schedule II—

(a) an application to an officer of the Customs or Excise Department (e.g., a bill of entry):

(b) an application to an officer of land revenue by a person holding temporarily-settled lands:

(c) an application to a Municipal Commissioner for conservancy or improvement;

(d) an application to any Collector or Revenue officer in his executive capacity;

(e) an application to any Chief Commissioner or other chief controlling revenue or executive authority, or officer charged with the executive administration of a division;

(2) a mukhtaranama or vakalatnama falling under Article 10 of Schedule II presented to an officer other than a court;

(3) a memorandum of appeal under Article 11 of Schedule II to an executive officer or chief controlling revenue or executive authority, or a Chief Commissioner or other chief controlling executive or revenue authority.

The extent to which they have already been abolished by exemptions.

The provisions of the Court-fees Act which relate to the levy of these miscellaneous fees by Revenue and other public officers as distinct from courts are now subject to so many exceptions and exemptions that it is probable that very little revenue is derived from them. The exceptions and exemptions fall under two categories: (1) those falling under section 19 of the Act itself, which says that nothing contained in this Act shall render certain documents named in it chargeable with any fees, and (2) those falling under notifications issued under section 35 of the Act, reducing or remitting fees payable on various kinds of documents. The documents exempted under section 19 include, *inter alia*—

(a) application or petition to a Settlement Officer or to a Board of Revenue or a Commissioner of Revenue relating to matters connected with the assessment of land, if presented previous to the final confirmation of such settlement;

(b) application relating to the supply for irrigation of water belonging to Government;

(c) application made to a revenue officer for leave to extend cultivation or to relinquish land in a temporarily-settled area;

(d) application for permission to cut timber in Government forests or otherwise relating to such forests;

(e) application for the payment of money due by the Government to the applicant;

(f) applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes.

Examples of fees reduced or remitted by notifications issued under section 35 of the Act are fees on—

Copies of village settlement records furnished to land-holders and cultivators during the currency or at the termination of settlement operations,

Applications which contain merely requests that a petition may be forwarded to the Government of India,

Applications for payment of deposits where the deposit is less than Rs. 25,

Applications for loans under the Land Improvement Loans Act or the Agriculturists Loans Act,

Applications for the return of impounded documents.

Applications for the return of documents,

Applications for the grant of licenses for the vend of stamps.

Applications for the repayment of fines,

Plaints in various kinds of summary suits in Revenue courts or before Revenue officers,

Applications in suits under the Madras Hereditary Village Officers Act,

Copies of judgments, decrees or orders passed in them,

Applications made by toddy drawers and shopkeepers for the grant of licenses permitting them or their servants to draw toddy,

and so on.

Section 19 of the Act contains 22 exemptions and the latest notification issued by the Madras Government under section 35 of the Act [G.O. No. 1368, Law (General), dated the 10th September 1921,] contains about 40 exemptions. Similar notifications under section 35 exist in other provinces. Except bills of entry, there seem to exist very few applications presented to non-judicial officers which now require to be stamped. The applications which still require to be stamped are likely to be so few that it may be regarded as inexpedient to legislate separately for the levy of fees on them, but it is certainly possible at least to relegate them to a different schedule from those relating to pure judicial fees.

Same pertain to Central departments.

And as for bills of entry, the fees payable in respect of them are properly speaking payments made in respect of services rendered in connection with Central and not Provincial subjects and this is another reason for their removal from the general schedules.

Suggested enquiry into total abolition.

A further matter for consideration in relation to these fees is that in many cases the other taxation imposed in relation to the subjects to which they pertain has of late years been largely increased. Having regard to this point; to the fact that some of them result in a payment to the Provinces for services rendered by Imperial officers; and to the volume of the existing exemptions, it would seem to be a matter for consideration whether they might not altogether be abolished. If they are retained, it is suggested that this should be done only in cases in which the application to which the fee is attached results in setting on foot an enquiry of a judicial nature. It is doubtful, however, if the number of application of this class would make it worth while.

Certain judicial fees levied in cash with reference to section 36 of the Act.

It seems desirable to refer to one more point, namely, the levy of various kinds of judicial fees otherwise than in stamps. Section 36 of the Court-fees Act says that nothing contained in chapters 2 and 5 of this Act applies to the fees which any officer of the High Court is allowed to receive in addition to a fixed salary. The Calcutta High Court Retrenchment Committee, 1923, have referred in paragraph 71 of their report to various kinds of fees paid to officers of the High Court on the Original Side for work done out of office hours thus—

By officers of the High Court

"Registrar—(a) For acting as Examiner in Attorneyship Examination, about Rs. 400 twice a year.

(b) For acting as Commissioner of Partition in suits valued under Rs. 10,000, Rs. 160 for each commission. These vary in number; but average about 2 or 3 a year.

(c) For attesting administration bonds of purdah ladies outside the Court premises, Re. 1 each. From the counterfoil receipt book it appears there have been 118 in the last eight and a half years, or an average of 14 per annum.

Deputy Registrar, Assistant Referee, Secretary to the Chief Justice and Assistant Registrar—For taking affidavits of purdah ladies and others unable to attend Court. These fees are placed in a common fund and periodically divided between the officers participating. In 1922 these fees amounted to Rs. 4,240 and were divided between nine officers, each getting Rs. 471.

Interpreters—(a) For explaining affidavits and petitions out of court hours and outside the court premises, Rs. 8 for every 20 folios. In respect of this each interpreter earned Rs. 261 in the year 1921-22.

(b) The Chief Interpreter—For explaining and affirming affidavits in jail, Rs. 16, very occasionally.

In addition, officers sometimes get commissions of partition and commissions to take evidence. These are, however, rare nowadays".

The Committee recommended that the emoluments to Government officers from sources of this kind should be scrutinised from time to time and that care should be taken that employment of this kind was not allowed to be sufficiently onerous to interfere with the regular work of the officials concerned.

—by the Official Assignees.

Under section 81 of the Presidency Towns Insolvency Act, the Official Assignee is entitled to receive for his remuneration the commission fixed by the rules made by the court. The remuneration naturally varies from year to year. In Calcutta the figures earned by the Official Assignee during the years 1918 to 1922 were as follows:—

	RS.
1918	38,794
1919	38,650
1920	51,970
1921	50,200
1922	97,600

In 1922 the emoluments of the officer exceeded those of any public servant in Bengal except the Governor. The Calcutta High Court Retrenchment Committee recommended that the office of the Official Assignee should be reorganised, that a permanent salary should be fixed for him and his establishment, that the balance of his earnings should go to the public exchequer,

and that, if at any time any considerable excess of profits over expenditure accrued, an enquiry should be held as to whether the fees laid down in the Insolvency Rules should not be reduced and the benefit given to the litigants. The Judicial Retrenchment Committee of Madras, 1923, also suggested that the office of the Official Assignee and the funds out of which he and his establishment are paid should be placed on a more satisfactory footing than at present. The Committee suggested that the Official Assignee should be paid a permanent monthly salary, that the commission levied by him should be credited to the Government, and that the unclaimed dividends in his hands should also be credited to the Government. They also recommended that an officer with a fixed monthly salary should be appointed to conduct the sales held by the Official Assignee.

—by the Sheriff.

The Calcutta High Court Retrenchment Committee recommended that the office of Sheriff should not be a source of profit to the incumbent, that his receipts and expenditure should be subject to a proper audit, and that all receipts in excess of expenditure, other than a nominal fee payable to the Sheriff himself to mark the historical character of his office, should be credited to the Government. The Madras Judicial Retrenchment Committee also recommended that the post of Sheriff should be an honorary one and that the entire proceeds of process fees, commission, etc., levied by him should be credited to the Government. Both Committees recommended that the establishment should be transferred to the High Court. It is understood that this recommendation of the Madras Judicial Retrenchment Committee has been accepted by the Local Government and that the office of the Sheriff there has been made honorary.

There may be similar cases of levy of fees in cash in other provinces also. Payment of public officers by means of fees is to be deprecated wherever the services for which the fees are paid and the collections from the fees themselves justify the appointment of a full time officer who can be remunerated by payment of a fixed salary.

DRAFT SCHEDULE OF VALUATIONS.

Nature of suit or proceeding.	Method of valuation.
Suit for money.	According to the amount claimed.
Suit for movable property other than money where the subject matter has a market value.	According to such value at the date of presenting the plaint.
Suit for possession of immovable property.	According to the market value thereof.
Suit under section 9 of the Specific Relief Act, 1877.	Half the fee on a regular suit for possession.
Suit to enforce a right of pre-emption, whether the right is founded on law or usage or on special contract.	According to the market value of the property in respect of which the right is claimed.
Suit by a person against whom any of the following orders has been made, to establish the right which he claims to the property comprised in the order:—	
(a) order made on a claim or objection to the attachment of property in execution of a decree.	Half the value of the property or interest in the property claimed or of the amount for which the attachment was made, whichever is less.
(b) order passed in proceedings relating to resistance or obstruction to possession and to dispossession.	Half the value of the property or interest therein claimed.
Suit to set aside an attachment or for a declaration that a certain property or interest in property is not liable to be attached, or *vice versa*.	Same as above.

Nature of suit or proceeding.	Method of valuation.
Suit to set aside any of the following sales, whether possession is prayed for or not. (a) Sale in execution of a decree of a civil court. (b) Sale in pursuance of a decree or order of a Collector or other officer of Revenue. (c) Sale for arrears of revenue or rent.	Half the value of the property which was the subject matter of sale.
Suit to restrain waste.	One-fourth of the value of the property in respect of which the relief is claimed.
Suit for administration or account or for dissolution of partnership.	According to the estimated value of the plaintiff's share. Provided that, if the amount found due to the plaintiff is in excess of the amount on which court-fee has been paid, no decree shall be passed for such excess unless the deficit court fee is first paid. Provided also that, in the case of suits for dissolution of partnership, there shall be paid a minimum court fee of Rs. 20 in a District Munsif's Court and Rs. 300 in a Sub-Court or District Court. Provided also that, where the amount found due to the plaintiff exceeds the limit of the pecuniary jurisdiction of the court in which the suit has been instituted, the amount decreed shall not exceed such limit.
Suit to rescind, cancel or set aside an instrument or decree on the ground of fraud or mistake or to declare that an instrument is forged, if the right or interest created, transferred or extinguished by the instrument or decree is capable of a money value.	Half of such money value.
Suit for specific performance —of a contract of sale or mortgage.	According to the amount of the consideration.
—of a contract of lease.	According to the aggregate amount of the fine or premium, if any, and of the rent agreed to be paid during the first year of the term.
—of a contract of perpetual lease.	According to the aggregate amount of the fine or premium, if any, and of ten times the average annual rent for the first thirty years.
—of a contract of service.	According to the amount of remuneration, or where the remuneration consists of a periodical payment, the average annual amount of remuneration.
—of an award.	According to the amount or value of the property in dispute.
Suit to obtain a declaration that an alleged adoption is invalid or never in fact took place, or that an adoption is valid.	According to the net value of the property to which a right is claimed in the suit by virtue of the adoption.

Nature of suit or proceeding.	Method of valuation.
Suit to establish a right to or for possession of a hereditary office.	If the office is remunerated, ten times the amount of remuneration for the proceeding year.
Suit by a reversioner during the life-time of a Hindu or Muhammadan female to declare an alienation made by her void except for her life-time or until her remarriage.	Half the value of the property alienated.
Suit by a Hindu under the Mitakshara law to set aside an alienation of ancestral or family property by a father of a manager.	The value of the plaintiff's share of the property alienated.
Suit to establish a right to share in joint property or joint family property, and suit for partition of joint property or joint family property.	The value of the share sought to be enforced or divided.
Suit to enforce a right to an annuity or other sum payable periodically.	Ten times the amount claimed to be payable for one year.
Suit to enforce a right to maintenance.	The amount claimed to be payable for one year.
Suit for resumption or assessment of rent-free land.	Ten times the annual net profits.
Suit for possession by a mortgagee.	The amount of the mortgage for which such possession is granted under the mortgage, or the value of the property of which possession is sought, whichever is less.
In the following suits between landlord and tenant: (a) for the delivery by a tenant of the counterpart of a lease, (b) to enhance the rent of a tenant having a right of occupancy, (c) for the delivery by a landlord of a lease, (d) for the recovery of immovable property from a tenant, including a tenant holding over after the determination of a tenancy, (e) to contest a notice of ejectment, (f) to recover the occupancy of immovable property from which a tenant has been illegally ejected by the landlord, and (g) for abatement of rent.	According to the amount of the rent of the immovable property to which the suit refers payable for the year prior to the date of presenting the plaint. Provided that, if in a suit of the class referred to in (d) the plaintiff's title is denied, and is made an issue in the suit, an additional court-fee shall be levied so as to make the fee equal to that payable on a suit for possession.
Suit by or on behalf of a local authority for possession of any public street or road, or any part thereof from possession of which it has been ousted.	The market value, subject to a minimum of Rs. 100.

Nature of suit or proceeding.	Method of valuation.
Suit for redemption, foreclosure or sale.	The amount due under the mortgage at the time of the suit.
Suit to declare that an easement exists or does not exist, with or without consequential reliefs.	The difference between the values of the dominant heritage with the easement and without the easement.
Suit to establish or deny status as *karnavan* of a Malabar *tarwad*.	A quarter of the value of the properties of the *tarwad*.
Suit to establish or deny the trusteeship of a temple or the right to manage any other public religious or charitable trusts and scheme suits.	A quarter of the value of the properties relating to the trust, inclusive of any amount which may be claimed to be payable to the trust on taking accounts.
Inter-pleader suit.	Half the value of the property in dispute.
Suit for compulsory registration of a document.	A quarter of the value of a suit for specific performance.
Suit for restitution of conjugal rights or for the recovery of a child.	Rs. 25 if in District Munsif's Court and Rs. 250 if in a Sub-Court or District Court.
Suit relating to— (1) membership of or excommunication from caste, (2) a procession in a public street, (3) honours and dignities in temples, etc., and precedence in their distribution, (4) rituals and ceremonials, e.g., right of a worshipper to repeat particular mantrams or to recite *prabandams* in a temple.	The fee payable should not be less than Rs. 100 in a District Munsif's Court and Rs. 500 in a Sub-Judge's or a District Judge's Court. In cases in which the nature of the suit is not obvious from the plaint the Court should have power at the time of issues to levy any additional fee which might be required to make up this amount.
Suit for which no court fee is prescribed elsewhere in the schedule.	Rs. 15 in a District Munsif's and Rs. 250 in a Sub-Court or District Court.

APPENDIX XII

Chapter XII—Probate Duties.

A Note by the Legal Adviser to the Committee on duties on inheritance.

HISTORY OF DEATH DUTIES.

In early times.

1. The history* of death duties goes back to a remote antiquity. Death duties in the nature of a transfer or mutation duty of 10 per cent existed in Egypt as far back as the second century B.C.† and may even have been in existence some centuries earlier. In the concluding years of the Roman Republic, as a result of the expenditure caused by various military expeditions, a law was promulgated in Rome whereby every beneficiary under a will was required to give a portion of his benefit to the treasury.‡ This law appears to have been temporary, and the definite commencement of the Roman system of death duties occurred in the year 6 A.D., when the Emperor Augustus introduced the well-known *vicesima hereditatum et legatorum*, which consisted of a five per cent tax on the acquisitions derived by inheritance or will of every Roman citizen except those passing to very near relatives. With the widening of Roman citizenship, this tax was extended until it came in the third century A.D. (Edict of Caracalla 212 A.D.) to embrace all free men, including foreigners and provincials. In fact it has been alleged that the Edict of Caracalla was itself promulgated with the express object of subjecting all the provincial subjects of the Roman Empire to this tax. The *vicesima hereditatum* underwent several changes prior to its abolition which, according to some historians, took place in the sixth century, though, according to others, it was abolished by Constantine the Great. By that time Feudalism had come into being, and the casualties of the Feudal law were really taxes upon the transference of land, whether from the dead or from the living.

Accordingly, Freeman refers to the Anglo-Saxon *heriots* and the feudal *reliefs* existing in England as the equivalent of the modern succession duty. As regards movable properties, the history of their taxation on the death of their owner is connected with the jurisdiction exercised in England by the ecclesiastical authorities, and began as a render in kind made by a parishioner as an oblation to his parish church with a view to expiate and make amends for his neglect of personal tithes and other ecclesiastical duties. This reminds one of the 'back-tax' theory of inheritance taxation. The render in kind subsequently became a money payment and lost its voluntary character. In course of time, it became, under the name of 'the mortuary', the subject of much extortion, against which legislation had to intervene to give relief.

The development of the English duties.

2. Up to the second half of the last century, ecclesiastical courts were the authority competent to issue grants of representation to deceased persons to enable their personal estate to be dealt with, and levied, on the issue of grants of administration or probate, certain fees which, in the reign of Henry VII, were also fixed by legislation. In 1694, this duty was made payable to the public exchequer in the form of stamps, though it continued to be administered by the ecclesiastical courts, and in 1857, the testamentary jurisdiction of the ecclesiastical courts was itself transferred to the probate court.

---

*This history has been prepared mainly from facts contained in Soward and Willan's 'Taxation of Capital'.

† Soward and Willan, page 15.

‡ Ibid, page 16.

The stamp duty of 1694 has since developed into the modern death duties. In 1780 a legacy duty was first imposed by Lord North, and a similar duty was afterwards the subject of legislation by Pitt in 1796. These Acts applied only to free personal property, and though Pitt attempted in 1796 to introduce similar legislation as regards land, his attempt failed. It was only in 1853 that Gladstone was able to introduce a succession duty which applied to all real and leasehold property and to settled movable property. It is unnecessary to trace the further history of the death duties in England. In 1894, exactly 200 years after the Stamp Act of 1694, a Finance Act was passed which did away with many of the anomalies and complexities of the previous law and introduced the estate duty. In the meantime death duties had been imposed in France, Italy, Germany, the Netherlands and Switzerland.

Similar duties in the East.

3. Coming nearer East, it has been pointed out that there was in the twelfth century a law in China which required the stamping of wills with a seal for which a tax was payable, and something similar seems to continue to the present day, the latest decree traceable being one issued in 1907 to the effect that every testament should bear a stamp—an ordinance which is said to have been by no means universally enforced. Death duties on a much more complete scale became operative in Japan in the year 1905.

Analogous taxes in ancient India.

4. In India, the majority of such duties as were levied appear to have been taken in somewhat indirect way. For instance, the rulers claimed as escheat the properties of persons dying without heirs, while they also made levies on the capital both of the living and of the dead. Manu says: "A fiftieth part of cattle and gold is to be taken by the king, the eighth part of grain or the sixth or twelfth"—Chapter VII, p. 130. In Chapter II of Book V of his 'Arthasastra', Kautilya says: "Wealthy persons may be requested to give as much of their gold as they can . . . . Spies, under the guise of sources, shall carry away the money of a dead man".

In this connection, reference may also be made to the custom of Indian rulers to levy *nazarana* on appointment to office or on succession to revenue-free grants, and occasionally in emergencies on succession to assessed estates when they were held under grants from the sovereign.

In later years, the Moghul Emperors appear to have made claims to inherit the estates of their subjects. Of these, Moreland says in his book, 'From Akbar to Aurangzeb': "The accounts of European visitors disclosed certain variations, some asserting that the claim was universal, others limiting it to the estates of the official nobility, and others extending it to the wealthier merchants; but legal exactitude is not to be expected from such sources, and if we consider these statements in the light of incidents recorded in other authorities, the most probable conclusion is that the rule was not absolutely rigid. The Emperor certainly claimed the estates of his nobles, and occasionally we hear of the claim being extended to estates of merchants; probably the practical questions which arose in any case were the value of the particular estate and the amount of bribes offered to avert confiscation. This view is in accordance with a letter written by Aurangzeb to Shahjahan, a portion of which was preserved by Bernier. 'We have been accustomed,' wrote Aurangzeb, 'as soon as an *Omrah* (noble) or a rich merchant has ceased to breathe, nay sometimes before the vital spark has fled, to place seals on his coffers, to imprison and beat the servants or officers of his household, until they made a full disclosure of the whole property, even of the most inconsiderable jewel. This practice is advantageous, no doubt; but can we deny its injustice and cruelty?'. The income derived by the Imperial treasury from this source cannot be stated precisely, but it must have been substantial".* The Royal claim to the estates of the deceased persons appears to have been abandoned by an agreement of 1624 so far as English people were concerned.

The above quotation derives support from the Turkish practice as described in Wilson's Anglo-Muhammadan Law, 5th edition, page 227. "On the

* Moreland, 'From Akbar to Aurangzeb,' page 277.

death of the head of a family, it is the duty of the judge, as public curator, to place seals on the house of the deceased. If the heirs choose to come to an arrangement among themselves, they obtain the removal of the seals by capitulation, that is, in consideration of a payment arbitrarily fixed at 5, 8, or 10 per cent of the value of the inheritance; but if they choose to insist on a partition by judicial authority, the Registrar of the Court draws up an inventory of the property of the deceased and also a list of the heirs, and an officer of the Court specially charged with this function indicates, with the law in his hands, the Sharers and Residuaries and determines the share of each . . . . It is added that the officers of the Fisc (*Bait ul Mal*) often add their seals to those of the judge, on the pretext of not knowing whether there are any legal heirs, and make the parties pay dearly for removal of the attachment. Tableau General Vol. III, p. 116". Elsewhere Wilson refers to the practice in some Muhammadan countries of the Government confiscating the entire savings of a deceased official.*

Dr. Maclean in his "Standing Information regarding the administration of the Madras Presidency" (page 84) states that a succession duty equal to 25 *per cent* on the value of the estates was levied in Kerala in the ninth century on Muhammadan subjects being landholders, and the old Dutch records preserved in Madras contain references to a similar tax levied by the rulers in Malabar in the 16th century. The following is an extract:—

"With regard to other cases, which have reference to old customs and privileges of the king, *e.g.*, the small revenue of their bazaar outside the town, the administration of their pagoda or temple, the part of the inheritance, which after death goes to the king, no hearing should be given to the Canarins, but the cases should be thrown out at once, as concerning matters in which they cannot hope for interference or assistance, and if we do not give in to them in cases of this nature, then the king will not take it amiss if we trouble ourselves with their other complaints. The reason why the king took it so to heart in the year 1770, when we meant to take away from him his jurisdiction over the Canarins, was that he feared that, if he consented to this, he would have to forego his profits both from their successions and their bazaar."

Such duties are almost universal.

5. With the growth of democratic institutions death duties have extended from one country to another, and today an inheritance tax is found in some form in nearly every civilized country in the world. It will be seen later that, while in British India there is a probate duty applicable to a large part of the community, in some of the Indian States there is in force a regular inheritance tax applicable to all classes.

THE INSTITUTION OF INHERITANCE.

A creature of the Law.

6. Before examining the theories upon which the existing duties are based or further developments of them proposed, it seems desirable to point out that these theories themselves represent a reaction. In a natural state of society, those hold property that *can* hold it, and the passing of it on to selected heirs is a purely artificial creature of the law and dependent entirely on the State for its enforcement. As Salmond says in his 'Jurisprudence': "The power of the dead hand is so familiar a feature in our law that we accept it as a matter of course and have some difficulty in realising what a very curious phenomenon it really is."† The quotations given above will be sufficient to show how, even in historical times, private rights of inheritance have not been regarded as so sacrosanct as they are regarded at the present day.

The State's rights to limit it—Bentham's proposals.

7. With the growth of democracy and a desire to get rid of existing inequalities of wealth, of income and of opportunities, the question of the State's right to limit inheritances has during the last century and a half,

* Wilson, Anglo-Muhammadan Law, 5th edition, page 60.
† Salmond, Jurisprudence, 7th edition, page 476.

been again and again raised by economists and social reformers. In his Essay on Supply without Burden, or Escheat vice Taxation, Bentham stated the earliest argument for the inheritance tax. He recommended the abolition of intestate succession except in the case of immediate relatives, and the limitation of the power of bequest of testators without direct heirs. In his Theory of Legislation (Principles of the Civil Code, Chapters 21 and 22) he proposed to limit the right of intestate succession to (1) spouse and direct descendants, (2) parents and (3) their descendants. Subject generally to the institution of a legitim he was in favour of allowing testation up to a half of the testator's properties. Such an extension of the principle of escheat, Bentham held, was not a tax, and in this feature of 'unburthensomeness', according to him, lay its chief advantage. If a man is led to look upon the whole of what has been left by a person to whom he stands in the position of an heir as his, he feels a hardship when he is called upon to pay a part of it as tax. But if, under the law regulating successions, he knows that nothing or only a small share is due to him, he would suffer no hardship. "For hardship depends on disappointment; disappointment on expectation, and if the law of succession leaves him nothing, he will not expect anything."

Mill's development of them.

8. Mill accepted Bentham's reasoning, but developed it. He advocated testamentary freedom subject to two limitations*, viz.: first that, if there are descendants, who being unable to provide for themselves, would become burthensome to the State, the equivalent of whatever the State would accord to them should be received from the property for their benefit, and, secondly, that no person should be permitted to acquire by inheritance more than the amount of a moderate independence. In case of intestacy, he advocated that the whole property should escheat to the State, which should be bound to make "a just and reasonable provision for descendants". Though, on principle, he was against a graduated property tax on the ground that it would really be a tax on industry and economy, he thought that "it was for the public good to place under limitation fortunes which were *unearned*, to restrain the accumulation of large fortunes in the hands of those who have not earned them by exertion".† This distinction between earned and unearned fortunes is elsewhere stated by him in these terms:—"Private property in every defence made of it is supposed to mean the guarantee to individuals of the fruits of their own labour and abstinence. The guarantee to them of the fruits of the labour and abstinence of others transmitted to them without any merit or exertion of their own is not of the essence of the institution"‡.

Subsequent further developments.

9. The teachings of Bentham and Mill created great interest, not only in the United Kingdom, but on the continent of Europe, where several thinkers began to demand drastic limitations of the unconditional right of succession. One of these, Bluntschli, originated the theory of State co-heirship or co-partnership in the property left by a deceased person, and his recommendations are thus described by the authors of the 'Taxation of Capital':—

"So far as the share of a child was concerned, Bluntschli did not propose to touch it for the public benefit unless it exceeded £5,000, but of any excess above £5,000, the town, he suggested, should receive 10 per cent; and directly such share exceeded £25,000, the State was to be entitled, in the excess above that amount, to a child's share. The scale then gradually developed, regressively as regarded the initial step in what may well be termed the taxable capital, and progressively as regarded the rate, culminating, in cases where the deceased left no relatives near enough to be descended from great-grandparents, in the estate passing in its entirety to the town up to a value of £2,500 and to the State so far as it exceeded this sum."§

* Mill's Political Economy, Book V, Chapter IX, section 1.

† Do. Book V, Chapter II, section 3.

‡ Do. Book II, Chapter I, section 3.

§ Soward and Willan, page 391.

Rignano's scheme.

10. It is unnecessary to refer to the many subsequent writers who have touched on the subject; the theory received its full development at the hands of the Italian Professor Rignano, in his Un Socialismo in Accordo colla Dottrina Economica Liberate published in 1920. His principle was this:—"The right of free bequest should be complete as regards property acumulated by saving and personal exertion, it should be considerably restricted as regards property received by inheritance, and it should be progressively restricted until it is completely annulled as regards property which has been transmitted a certain number of times from the dead to the living."* In other words, his proposal was to establish an inheritance tax which should be progressive in time. The illustration given by him is as follows:—Suppose the inheritance tax on a first transmission of the inheritance is $1/3$, on a second transmission $2/3$ and on a third transmission, the whole. Suppose A, who receives nothing by inheritance, acquires by work and saving property of value a which he leaves by will to B. Then the tax will be $1/3a$ and B will receive $2/3a$. Suppose B by his own work and saving adds a further amount b to his inheritance of $2/3a$, and leaves the whole by will to C. Then the tax will be, as to $2/3a$, two-thirds, and as to b, one-third. Therefore the total tax will be $4/9a + 1/3b$ and C will receive $2/9a + 2/3b$. Suppose that C by his own work and saving adds a further amount c to his inheritance and leaves the whole by will to D. Then the tax will be, as to the $2/9a$, the whole, as to $2/3b$, two-thirds, and as to c, one-third. The total tax will therefore be $2/9a + 4/9b + 1/3c$, and D will receive $2/9b + 2/3c$, and so on indefinitely.

Professor Rignano himself contended that a tax according to his plan would lead to more work and saving by those whose property would on their death be subject to it than would take place if there was no inheritance tax at all. He said:

"Experience teaches us that the possessors of great fortunes, being able to leave to their children the property which they themselves received by inheritance, are in no way stimulated to increase these still further. Generally they spend their considerable incomes in luxury and pleasure. . . . . It is the existing right of bequest which leads them to dissipation instead of stimulating them to save, even when they are very farseeing and very much attached to their families. But these men would conduct themselves quite differently, if one said to them, "Take care; of the wealth which you have yourselves inherited, you will only be able to leave to your children a small fraction, or even nothing at all, whereas of that which you have yourselves accumulated, you will be able to leave a very considerable part. This argument would dispose them more than any other to economise their foolish expenditure and to transform part of their income into beneficent productive capital. Furthermore, whatever his social position, an affectionate father would be far more stimulated to work and saving, when each hundred francs that he made would represent for his children a value double or treble that of each hundred francs of his own inherited property."†

The theorists confirmed by practical statesman.—Gladstone.

11. It will be of interest to compare these opinions of the theorists with some pronouncements of practical statesmen. Mr. Gladstone said in connection with his Succession Duty Act, 1853:‡ "The carrying property in perfect security over the great barrier which death places between man and man is perhaps the very highest achievement, the most signal proof of the power of civilised institutions. . . and an instance so capital of the great benefit conferred by law and civil institutions upon mankind and of the immense enlargement that comes to natural liberty through the medium of the law, that I conceive nothing more rational than that, if taxes are to be raised at all, the State shall be at liberty to step in and take from him who is thenceforward to enjoy the whole in security that portion which may be *boná fide* necessary for the public purpose".

* Dalton, The Inequality of Incomes, page 132.

† Ibid, pages 323-24.

‡ Hansard, Volume 127, page 267. 12th May 1853.

Sir William Harcourt.

The words of Sir William Harcourt in introducing the Finance Bill of 1894 are even more striking. "The State takes its share first before any of the successors in title or beneficiaries. The reason on which this is founded is plain. The title of the State to a share in accumulated property of the deceased is an anterior title to that of the interest to be taken by those who are to share it. The State has the first title on the estate and those who take afterwards have a subsequent and subordinate title. Nature gives a man no power over his earthly goods beyond the term of his life. What power he possesses to prolong his will after his death, the right of a dead man to dispose of his property, is a pure creation of the law, and the State has a right to prescribe the conditions and the limitations under which the power shall be exercised".

A summary of certain further arguments advanced in favour of a duty.

12. The following catalogue presents certain further arguments advanced by advocates (some of them rather extreme ones) of a tax of this nature:—

(1) It is a direct tax, and by a carefully planned system of graduation, it may be made to weigh most heavily on those who can bear it best.

(2) The fact of a large accumulation itself suggests that the man who has made it has, whether by reason of lightness of taxation or through evasion, not contributed in proportion to his ability to pay.

(3) Death duties are not only serviceable as a net for catching those parts of unearned or surplus wealth that have escaped taxation, but they also enable other taxes to be kept normally within such reasonable limits as not to check the immediate earning energy or the saving of any class of the community.

(4) A large part of the wealth and the incomes now enjoyed by private individuals is the result of exploitation of the community, and pending such change in the system of property owning and the relations of Capital and Labour as will deprive individuals of the means to appropriate unearned wealth and incomes, the instrument of taxation may be usefully employed by the State to obtain a return of some portion of the results of the exertions of the dispossessed classes for the purpose of improving their conditions of life.

(5) The payment of death duties is very little felt, because the person who inherits what is in many cases a windfall has no experience of enjoyment of the property. It is mostly paid by executors before the inheritors receive their shares.

(6) The question of an inheritance tax is more than a mere economic problem. Huge inheritances create an idle class of people who live upon wealth not earned by themselves. Andrew Carnegie said in his Gospel of Wealth: "The Almighty Dollar bequeathed to children is an almighty curse. No man has a right to handicap his son with such a burden of great wealth."

(7) The State has to maintain the necessary machinery for effecting, and in cases of need for judicially enforcing transfers in the ownership of property arising on the occasion of death, and it is but proper that the persons who are benefited should pay the cost of such services.

(8) The protection rendered by the State was necessary for the accumulation of the estate. This fact in reality made the State a co-partner with the acquirer of the estate.

The objections raised.

13. The main objection that has been raised to a highly graduated scale of inheritance tax is that it would prevent accumulation and retard production. Ricardo, for instance, took the view that it should be the policy of Governments never to lay such taxes as will inevitably fall on capital; since by so doing they impair the funds for the maintenance of labour and thereby diminish the future production of the country. He supported his argument by an example in which a person to whom a legacy of £1,000 is given, charged with a legacy duty of £100, receives only £900, thereby getting £100 less of capital. But

McCulloch pointed out in reply that the individual who leaves property would know that it will be subject to the tax and consequently has an additional motive to save in order that his heirs may not be prejudiced by the payment. In practice it is not uncommon in England for the testator to take out a life assurance policy for a sum equal to the probable amount of the tax. When this is done, the tax cannot very much affect accumulation. Nor does the experience of countries that have enforced the tax prove that it does so. Furthermore it may be argued that the money taken as taxes is transferred from private pockets to the State and used for better advantage of the nation than if it were not so transferred. Individuals may waste their capital; the State is more likely to apply it to useful purposes.

Furthermore it is only in the case of persons of moderate fortune that a desire to provide for their children operates as the main motive. As Professor Carver observes: "After one's accumulation has increased beyond that which is necessary to safeguard one's offspring and to provide for the genuine prosperity of one's family, the motive to further accumulation changes. One then engages in business enterprises because of a love of action and a love of power. Accumulated capital becomes then one of the instruments of the game. So long as the player is left in possession of this instrument while he is one of the players, he is not likely to be discouraged from accumulation merely by the fact that the State, rather than his heirs, gets it after he is through with it". Mr. Carnegie also says: "To the class whose ambition it is to leave great fortunes and to be talked about after death, it will be even more attractive, and, indeed, a somewhat nobler ambition, to have enormous sums paid over to the State from their fortunes."

THE SYSTEMS IN FORCE.

14. To come now to the systems of death duty in force in other countries.

Soviet Russia has abolished inheritance.

The most confiscatory in its effect is that of Soviet Russia, where the decree of the 27th April 1918 is described as follows:—

"It provides that inheritance, whether by law or will, is abolished. After the death of an owner, the property which belonged to him, whether movable or immovable, becomes the property of the Russian Socialist Soviet Federal Republic . . . . Until the issue of a decree dealing with general social arrangements, relatives who are in need, i.e., who do not possess a minimum maintenance, and who are incapable of work . . . receive support from the property left by the deceased. The amounts of such allowances are to be determined by local tribunals. Such allowances have priority over the claims of creditors of the deceased. Property of value not exceeding 10,000 roubles, and also farm lands, are excluded from the scope of the decree and pass into the possession of the surviving spouse, and the poorest among the close relatives, of the deceased. In the event of disagreement among the latter as to the control and management of the property, the local tribunal will decide."*

Elsewhere, the State only collects death duties.

15. In other States, the redistribution of property is arrived at with a greater tenderness for "established expectations", and carried out mainly through inheritance taxes by which a part of a deceased man's property, if it exceeds a certain minimum value, is transferred to a public authority.

Principles of graduation.

16. In most of the inheritance taxes actually in force, three principles of graduation are found, singly or in combination. The first is graduation according to the total amount of property left by a deceased person, larger amounts paying a higher proportionate tax than smaller amounts. The second is graduation according to the total amount received by individual inheritors, the larger amounts again paying a higher proportionate tax than the smaller. The third is graduation according to the relationship of the inheritor to the deceased person, a near relative paying a lower proportionate tax than a distant relative, and the latter a lower proportionate tax than a stranger.

* Dalton, The Inequality of Incomes, page 292.

17. The plans adopted by different countries depend upon their respective laws of inheritance and are an illustration of the recognition by fiscal legislators of the connection which exists between death duties and the laws of inheritance. In several parts of continental Europe and in countries which have borrowed the laws or legal ideas of the Romans, traces of the old theory of the Roman Law, viz., of the ownership of property by the family, still survive in the institution of a compulsory share (*portion legitime*) in favour of certain near relations.

The systems adopted depend on the laws of inheritance.

18. In fact, Dalton divides all modern communities into two broad classes according as their laws of inheritance provide for substantial freedom of bequest or for some form of legitim. "Substantial freedom of bequest", he says, "prevails in England and Wales and in Ireland, in the self-governing British Dominions, except South Africa, and in the United States of America, except in the State of Louisiana. Various forms of the legitim are found in Scotland, in all the more important countries of Continental Europe, except Russia, in South America, in South Africa, and in the State of Louisiana. The Russian Law was difficult to classify before the Revolution, and the Soviet Government has since practically abolished the inheritance of property. In the United States inheritance law is State and not Federal, and in most States a surviving spouse has certain rights of succession. This fact might be thought to justify the inclusion of the United States among the States of the legitim. But in all other cases the legitim includes provision for children and other relatives, besides a surviving spouse. The details of the legitim vary considerably from one country to another." *

Different laws of inheritance favour free testation or the legitim, respectively.

19. As the law of legitim establishes the legal right of certain relatives to a part of the dead person's property, inheritance taxes are generally so framed, where the law of legitim is in force, as either to exempt these relatives altogether or to bear less heavily upon them than on the others. On the other hand, where a man is at liberty to give away his whole fortune to outsiders, relatives cannot be said to possess an indefeasible right to inherit his property, and the State is less solicitous about their exemption from the inheritance tax. But even here, the principles which find their expression in the laws of inheritance are not wholly disregarded. The laws of inheritance prescribe an order of precedence among the heirs. The fiscal legislator comes and says, "The lower your position in this scale of precedence, the higher the rate of succession duty you shall pay". The following is the justification of this principle of graduation on the basis of consanguinity given by Gladstone in 1853:

Where free testation prevails, death duties are generally graduated with reference to the value of the whole estate. Where the law of legitim prevails, graduation has reference more commonly to the degree of relationship.

"It appears to me that this principle (graduation based on consanguinity) is neither unjust nor impolitic. Speaking generally, those who enjoy direct succession are educated in expectation founded on that succession, are trained up and have their habits and mode of life formed with relation to the property they look forward to enjoying. Upon them, therefore, it would be a great hardship, were the State to step in and take away any material portion of the property which they have been taught to expect. On the other hand, successions of strangers, and of persons not within traceable degrees of consanguinity, are successions very commonly of an accidental character and are unconnected with any training or expectations . . . . It does appear, therefore, very reasonable that a scale founded on degrees of relationship should be maintained".

From an examination of the systems of inheritance tax in force in various countries, it may be stated in general language that, in countries where there is a complete freedom of bequest, the tax is graduated mainly with reference to the value of the whole estate, while in countries where the law of legitim prevails, graduation has reference mainly to the degree of relationship.

*Dalton, The Inequality of Incomes, pages 291—93.

20. The various systems in force in different countries may now be examined from this point of view. Death duties in England consists of (a) a transfer or mutation duty, called the estate duty, which is a duty graduated on the amount that is payable by reason of the passing of the property on death regardless of its destination, and (b) the legacy and the succession duties, which are duties graduated on a consanguinity basis and payable by reason of the acquisition by a beneficiary of what is left of the property which is passed on death after the deduction of the estate duty, the legacy duty being payable on all free personal property and the succession duty on settled personal property and real property. The estate duty is an illustration of the first of the three principles of graduation mentioned in paragraph 16, and the legacy and succession duties of the second and third principles. In England, the freedom of bequest is unlimited, and though the legacy duty and the succession duty are taxes graduated on the basis of consanguinity, their influence on the general scheme of British death duty taxation is, when coupled with the estate duty, comparatively insignificant. In the year 1922-23, whereas estate duties yielded £48,463,487, the legacy and succession duties yielded only £7,956,069 together.

The various systems examined from this point of view.

Death duties in England.

21. On the continent of Europe, the law of legitim commonly prevails and death duties are generally of the nature of succession duties graduated on a consanguinity basis, with certain exceptions in France, Holland, and Belgium, which will now be described.

In other European countries.

In France there are two death duties, the first corresponding to a legacy duty and the second to an estate duty. The legacy duty dates back to 1801 and is charged on property passing to a beneficiary, at progressive rates depending on the amount of the property passing and the degree of relationship of the beneficiary. The rates are rather complicated as the beneficiaries are divided into ten classes and there is a further sub-division of each class on the basis of the amount of property passing. The estate duty is charged on the total net estate left by a deceased person who leaves less than four children living or represented by heirs. The rates are progressive and vary with the size of the estate and the number of children. This tax was introduced in December 1917. Where property devolves upon a life tenant, the value of the life interest is determined in accordance with an arbitrary scale which is according to the age of the beneficiary. The age groups are at ten-year intervals, and the value of the life interest, where the age of the life tenant does not exceed 20, is seven-tenths of the whole property, one-tenth being taken off for every additional term of ten years, with the result that the value of the life interest of a person of over 70 years of age is one-tenth of the whole property. The heirs, legatees and beneficiaries of the deceased are responsible for the payment of the duties, and the duties are due before the passing of the estate is finally registered.

France.

In Holland, succession duties are levied on all property, movable or immovable, that is inherited or acquired out of the estate of an inhabitant of the kingdom through the death of such inhabitant. An inhabitant is defined as a person having his or her place of residence within Holland. In respect of the property inherited or acquired by the children or spouse, the rate of the succession duty is the lowest, and it rises with the degree of remoteness of relationship and also of the amount of inheritance, from 3½ per cent in all cases of inheritance by children or spouse not exceeding 1,000 florins to 47 per cent in the case of inheritances by remote relations or strangers exceeding 500,001 florins. There are reductions when the heir has four or more children living and there are certain exemption limits, also varying with the relationship of the inheritor to the deceased. In the case of a spouse or a child, the exemption limit is 1,000 guilders, of other heirs 300 guilders, and of strangers 100 guilders. Annuities and yearly payments are valued at the yearly amount multiplied by factors according to a prescribed scale graduated with reference to age. In addition to the succession duties, there is a donation duty payable on gifts *inter vivos* and a transfer duty payable on bequests or donations by persons resident abroad, that is, all non-inhabitants, of real property situated in Holland.

Holland.

Belgium.

The Belgian death duties have points in common with both the French and the Dutch death duties and are nearer the latter. There is no estate duty on the whole estate left by the deceased as in France. The succession duty, as in France and Holland, is a graduated duty on property acquired from the deceased by heirs or beneficiaries. In addition to this, there is a mutation duty which is charged on immovable property in Belgium passing on the death of the owner wherever resident, corresponding to the Dutch transfer duty. But in Belgium, unlike Holland, donations *inter vivos* are not assimilated to property passing at death and are only subject to a registration duty.

Italy.

In Italy, the duties generally resemble the French except that they are a little higher on lineal successions and a little lighter in other cases. They also introduce a new principle, viz., graduation according to the property already owned by the inheritor.

Germany.

In Germany, the plan adopted by the Imperial Law for the federal duty that came into force on the 1st July 1906 was to exempt the lineal descendants and spouse and to levy an acquisition duty graduated on relationship from others. The consanguinity scale was divided into four grades and an element of graduation on amount was also introduced, varying with the amount of the benefit taken.* The Imperial Law expressly empowered the individual States to impose such additional taxes as they thought fit. In most German States, descendants are exempt, and in Prussia, ascendants as well as the husband and wife are also free.

United States of America.

22. In the United States of America, inheritances are taxed both by the States and by the Federal Government. The Federal tax is in the nature of an estate duty, officially defined as "a tax upon the transfer of net estates of decedents dying after the passage of the Act . . . whether the decedent be a resident or a non-resident of the United States.†" The tax is graduated on a progressive scale on the amount of the estate on which the duty is levied. In addition to the Federal estate duty, various States levy death duties independently. The State taxes are generally succession duties measured by the amount of property received by the beneficiary, with variations in favour of near relations. There exist wide differences between the several States as regards the classification of heirs, exemptions and rates.

Death duties in Japan.

23. Death duties were introduced in Japan in 1905 after the Russo-Japanese war. The law governing them has been altered since so as to make the duties progressive. The duties are applicable to all property situated within the Japanese Empire, whether belonging to Japanese subjects or not. The rate of taxation varies according as the right to the property is acquired by virtue of succession to the headship of the family or by bequest. In the former case the rate varies from ½ per cent to 4 per cent, and in the latter case from 1 per cent to 6½ per cent, according to the value of the property and the nature of the succession.

In the Straits Settlements.

24. According to the Stamp Ordinance of the Straits Settlements an estate duty is payable in the case of death of every person accruing after the 1st February 1908 on the principal value of all property passing on such death. According to the Ordinance of 1907, the rates varied from 1 per cent to 7 per cent. The Ordinance was amended in 1922 and the revised rates vary from 1 to 12 per cent. The Ordinance follows very closely the English Finance Act of 1894, and the estate duty is payable, if the deceased is domiciled in the colony, on all immovable property situated in the colony and on all movable property wherever situated, and if the deceased was not domiciled in the colony, only on property situated in the colony.

---

*Soward and Willan, page 398.
† Do. do. 399.

In Ceylon.

25. In Ceylon, the collection of estate duties has been in force since July 1919 by virtue of Ordinance No. VIII of 1919. This estate duty includes all property of which the deceased was, at the time of his death, competent to dispose. The rates of duty vary from 1 per cent on amounts exceeding Rs. 1,500 to 20 per cent on an estate of 150 lakhs of rupees and over. No distinction is made between near and distant relatives, and in addition to the estate duty, there is a separate settlement estate duty where the property is settled.

Rates of duty.

26. The information available to the Committee as regards the rates of duty in force is not very complete. Such as is available in the case of the United Kingdom, France, Holland, Belgium and Japan is given in Annexure A. The figures are, generally speaking, those for 1924.

Inheritance duties in Indian States.

27. In India itself similar duties are in force in several States. The following are the particulars available:—

Rajputana States.

Bikaner .. I. In intestate cases—

(1) For descendants of the deceased ..	Nil.
(2) For the descendants of the father of the deceased	2½ per cent of the value of the property.
(3) For the descendants of the grandfather of the deceased	5 „
(4) For the descendants up to and including the fifth degree from the deceased ..	10 „
(5) For the descendants up to and including the seventh degree from the deceased.	20 „
II. For heirs succeeding by virtue of a will ..	7½ „

Sirohi .. Formerly a succession fee locally known as *Kapar Bib* was levied at 10 per cent, but since the passing of the new Stamp Act in Sirohi the duties have been reduced to the following rates :—

		Rs.
8 per cent on the value of the property up to	.. .. ..	5,000
6 Do. do.	.. .. ..	10,000
5 Do. do.	.. .. ..	20,000
4 per cent on any amount in excess of	.. ..	20,000

Bharatpur, Alwar, Dholpur, Karauli Kotah. Succession fees are payable in certain cases by jagirdars.

Kathiawar States.

Junagadh .. .. No death duty is levied ordinarily, except in case of succession to alienated holdings, for which provision is made in Rule XII of the Alienation Settlement Rules of the State.

Bhavnagar .. .. When a succession certificate to the property of deceased is applied for and when the property exceeds Rs. 1,000, stamp duties are charged at Rs. 5 per Rs. 1,000 or part thereof.

Dhrangadhra .. If an application for heirship or administration certificate in respect of the property of a deceased person is made, the court levies 4 per cent on the value of the immovable property in the first instance. For property subsequently sought to be included in the certificate 6 per cent *ad valorem* is charged.

Wankaner .. .. Fees are charged when a probate of a will or administration or succession certificate is asked for, in which case the court charges 1 per cent from an heir who is a lineal male descendant and 1½ per cent from others *ad valorem* on the amount or value of the property.

Central India States.

Indore	Fees at 2½ per cent are levied on the grant of probate or letters of administration on succession or heirship certificates. In addition a succession *nazarana* is taken from jagirdars and inamdars in respect of their land.
Chhatarpur (Bundelkhand).	(1) No duty is charged when property is inherited by some direct male descendant or when it belongs to a joint family. (2) A duty equal to one-fourth of the value of the property is charged when it is inherited by a paternal collateral. (3) A duty equal to one-third of the value of the property is charged when it is inherited by a maternal collateral.

Punjab State.

Bahawalpur	A death duty is imposed on the mutation of landed property belonging to the deceased to his heir, and this is levied according to State Standing Order No. 10.

Some features common to various systems.

28. Before leaving this part of the subject, it may be useful to draw attention to some provisions which are common to the several systems of inheritance taxation.

Funeral expenses.

29. In assessing the tax, it is only the net value of the estate that is taken into consideration. In ascertaining such value, allowance is made for funeral expenses, debts, etc.

Quick successions.

30. Adam Smith considered that a death duty violated his first requirement of equality on account of the irregular intervals at which death occurs. That objection has, in several countries, been met by a graduation of the tax with some regard to the frequency of its imposition. For instance, the Chilian Death Duty Law of 1878 prohibited the imposition of a death duty in cases of second successions within a period of ten years. The Japanese Death Duty Law affords exemption to the extent of the full amount of the duty paid on the previous succession in the case of a second succession accruing within a period of five years, and exemption to the extent of one-half of that duty when a third succession accrues within a further period of two years. Under the Imperial Death Duty Law of Germany of 1906, so far as certain classes of landed property are concerned, complete exemption is afforded on a second succession within five years and exemption limited to one-half of the previously paid duty, in the case of a succession occurring more than five, but less than ten years after the first. In England, the same principle has been recognised in section 15 of the Finance Act of 1914, which provides that, so far as the taxable subjects consist of land or business, there shall be reductions in the case of quick successions as follows:—

Where the second death occurs within	1 year of the first death by		50	per cent.
,,	2 years	,,	40	,,
,,	3	,,	30	,,
,,	4	,,	20	,,
,,	5	,,	10	,,

In the case of property passing more than once owing to deaths caused by the Great War, it has been provided in England that the first payment of duty shall suffice. In India a notification to the same effect was issued by the Government of India under section 35 of the Court Fees Act and renewed by the Local Governments under the powers conferred on them by the Devolution Act, 1920.

Joint property.

31. The interest of the deceased person in joint property is generally valued for purposes of estate duty. For instance, in England, the share of a deceased person in property of which he was a joint tenant or joint owner is regarded as falling within the category of property of which he was at the time of his death competent to dispose. Further, section 3 of the Succession Duty Act of 1853 provides that "where any persons shall, at or after the time appointed after the commencement of this Act, have any property vested in them jointly, by any title not conferring on them a succession, any beneficial interest in such property accruing to any of them by survivorship shall be deemed to be a succession; and every person to whom any such interest shall accrue shall be deemed to be a successor; . . . . Where any persons after the time appointed for the commencement of this Act shall take any succession jointly, they shall pay the duty, if any, . . . in proportion to their respective interests in the succession, and any beneficial interest in such succession accruing to any of them by survivorship shall be deemed to be a new succession derived from the predecessor from whom the joint title shall have been derived".

Payment by instalments.

32. Several systems of law contain provisions for payment of death duties in instalments. The English law allows payments in respect of real property in annual or half-yearly instalments distributed over eight years. In France, the duty is payable in two, four, six, eight or ten half-yearly instalments according to the percentage charged. In Belgium, the period over which the instalments may be distributed is three years.

THE DIFFERENT LAWS OF INHERITANCE IN FORCE IN INDIA.

Existence of a variety of laws of inheritance in India.

33. In any attempt to propound a scheme for a general inheritance tax in India the most important fact to be remembered is the existence side by side of a variety of laws of inheritance governing different communities. Some are reproductions of the English law and allow unlimited powers of testation. Some, e.g., the Muhammadan law, recognise a legitim; while the Mitakshara law of joint-family property prohibits the making of a will altogether. From the earliest times, the rulers have left the inhabitants to be governed by their own laws, with the result that the Hindu and Muhammadan laws of inheritance have continued almost untouched. Under the Government of India Act and in the various Civil Courts Acts in force in different provinces, the application, in matters regarding inheritance, of the Hindu law to Hindus and the Muhammadan law to Muhammadans has been statutorily guaranteed, although inheritance among Christians and Parsis is governed by statute. In these circumstances, it becomes necessary, before examining the various proposals made from time to time for imposing a general inheritance tax, to examine briefly the systems of inheritance that prevail.

Hindus.

34. In describing the law of devolution of property on the death of a deceased person under Hindu law, an initial distinction has to be made between the Mitakshara and the Dayabhaga systems. The former prevails, though with some variations between provinces, over the greater part of India. The home of the Dayabhaga system is Bengal, to which may be added Assam and the greater part of Bihar. The Mitakshara is, however, followed in North Bihar and Tirhut and occasionally in Orissa.

The Mitakshara.

35. Under the Mitakshara system property is divided up into joint-family property and self-acquired or separate property. Generally speaking, joint-family property consists of (i) ancestral property, (ii) accretions to ancestral property, including property acquired with the help of ancestral property, (iii) self-acquired or separate property thrown into the common stock. Self-acquired property is property acquired by a member of a joint family separately without detriment to joint-family property. Where the existence of a nucleus of ancestral property is proved, the presumption is that all the property in the hands of every coparcener is joint-family property, and it rests with the member setting up a claim of self-acquisition or separation to prove his case. Property which is self-acquired or separate in one generation may become joint in the next. Thus, if a man had self-acquired property and died intestate leaving sons, that property would become ancestral property in their hands with rights of birth and survivorship therein in their sons. Self-acquired property devised by a father to his sons would probably be regarded as

self-acquired property in their hands (12 Bom., 122; 29 All., 354) though in I.L.R., 24 Mad., 429, the question was said to depend on the intentions of the testator as expressed in the will. No individual member of a joint family can, whilst the family remains undivided, predicate of joint-family property that he, that particular member, has a certain definite share. (*Appovier* v. *Ramasubbier*, 11 M.I.A., 75). Every member has a right to enjoy each and every part of the joint-family property without limitation, and a member entitled to receive the least share on partition may consume the largest share of the income of the joint family. A member can, however, if he is so minded, have his share ascertained by partition, but until that is done, his share is liable to fluctuation by the birth and death of members. Even where a member or members become separate by partition, it is open to the rest to remain united, and further, certain divided coparceners may become reunited with rights of survivorship *inter se*: A member of a joint family may during his life-time alienate his share, but he cannot dispose of it by will, because joint-family property devolves, not by succession, but by survivorship.

Property which is not joint—that is, either separate or self-acquired property—is subject, in default of a will, to the law of inheritance and devolves on the following heirs in order:—

(1) Son, grandson, great grandson.
(2) Widow.
(3) Daughter.
(4) Daughter's son.
(5) Mother.
(6) Father.
(7) Father's son.
(8) Father's grandson.
(9) Father's mother.
(10) Father's father.
(11) Father's brothers.
(12) Father's brother's son.
and so on.

The agnates up to the fourteenth degree are preferred to cognates. And as a rule males are preferred to females. Thus, a sister's son, being a cognate, would be postponed to an agnate of the fourteenth degree, and a daughter's daughter would come in, if at all, only where no male relations existed.

It is unnecessary to describe the difficulties that have arisen as regards the preferential claims of competing heirs under this law, but one or two points may be noted in relation to the nature of the estate inherited in certain cases—

(a) The property of women is divided into two classes, *stridhanum and non-stridhanum*. The former is the woman's separate property, her *peculium*, derived by such means as gift or acquisition. This devolves on her own heirs. Property acquired by a woman by inheritance is not *stridhanum*, and reverts to the heirs of the last owner. The heirs to a woman's *stridhanum* are daughter, daughter's daughter, daughter's son, husband and so on.

(b) In Bombay certain females (e.g., daughters) take a full interest like males. Elsewhere they can only enjoy the usufruct of the property they inherit and cannot alienate the *corpus* except for what is called necessity, and on their death, the property devolves, not on their heirs, but on those of the male *propositus*.

(c) At each stage, heirs of the same class take jointly. Two or more widows or daughters take their husband's or father's property jointly, i.e., with rights of survivorship; and in Madras, daughter's sons, though born of different daughters, take their grandfather's property jointly.

Malabar Law.

(*d*) In Malabar, the idea of joint family is so strong that individual members of a *tarwad* cannot as of right claim a partition of the *tarwad* property, and there is no right of testation.

The Dayabhaga.

36. To turn now to the Dayabhaga Law, the cardinal points of difference between this and the Mitakshara system are, that in the former there is no right by birth in ancestral property, that two or more persons inheriting property together become tenants in common and not joint tenants, and that there is no right of survivorship. Ancestral property inherited by a father is entirely at his disposal, and his sons cannot claim a partition thereof from him during his lifetime. He can alienate it by transfer *inter vivos* or by will. When he dies intestate, his sons take the property as tenants in common. For the rest, the law of inheritance is practically the same as in the Mitakshara law, thought the father is preferred to the mother and some other variations of detail exist. In regard to women's property, the same distinction is made between what is *stridhanum* and what is not.

The Buddhists, Jains and Sikhs.

37. Subject to special customs and usages, Buddhists, Jains and Sikhs are all governed by the Hindu Law. So also are the Khojas and Cutchi Memons of Bombay, though the latter have the right under the Cutchi Memons Act, 1920, of adopting the Muhammadan law by declaration.

Muhammadans.

38. The law of inheritance among the Muhammadans is based ultimately upon the Koran, and varies according to the school of law by which the deceased was governed. Common features between all the schools are as follows:—

(1) Certain persons such as sons, daughters, widows, husbands, and parents are never excluded from inheritance.

(2) A part of a man's property not exceeding one-third may be disposed of by will, or by gift during mortal illness.

In other words, the Muhammadan law recognises the principle of the legitim and discards that of joint ownership or survivorship.

Indian Christians.

39. The Indian Christians are for purposes of succession governed by the Indian Succession Act, 1865. Under this, the widow is always entitled to a share, which varies according as the deceased person has left lineal descendants or not. Children, both sons and daughters, take equally. The heirs, generally speaking, consist of (1) lineal descendants, (2) father, (3) mother and brothers and sisters, (4) kindred in the order of propinquity.* The right of testation is unlimited, though (1) a will is ordinarily revoked by the marriage of its maker, (2) a bequest in favour of a charity cannot be made by any person having a nephew or niece or any nearer relative except by a will executed not less than 12 months before death and deposited within 6 months from date of execution in some place provided by law for the safe custody of the wills of living persons.

Parsis.

40. Parsis are governed for the purposes of intestate succession by the Parsi Succession Act XXI of 1865, but for other purposes as regards succession are governed by the Indian Succession Act. A spouse is always entitled to a share. The other heirs are children and other lineal descendants, parents and their descendants, paternal grandparents and their

* This is a very general description. For details of the order of precedence please see Parts IV and V of the Indian Succession Act, 1865.

descendants, paternal grandfather's father and mother and their descendants, maternal uncle and maternal aunt and their descendants, maternal grandfather, maternal grandmother and their descendants, son's widow, brother's widow and so on.* The power of testation is the same as in the case of Indian Christians.

Europeans, Eurasians, Armenians, Jews and foreigners.

41. Europeans, Eurasians, Armenians, Jews and foreigners are governed by the Indian Succession Act. Only it is necessary in their case specially to remember that, under section 5 of the Indian Succession Act, succession to immovable property in British India is regulated by the law of British India irrespective of their domicile at death, while succession to movable property is regulated by the law of their domicile at death.

THE EXISTING DUTIES IN BRITISH INDIA.

The English duties developed out of a probate duty.

42. As has been indicated above, succession duties began in England with the levy of a probate duty, which was merely a charge of 5 shillings, being the cost of a stamp to be placed on the probate of a deceased person's will or the letters of administration regarding his effects when he died intestate. This duty by progressive advances developed into a tax upon property itself, however passing, graduated according to its aggregate value, and a further tax graduated according to the distance of the relationship between the deceased owner and the living beneficiary.

The duties levied in India on probates, letters of administration and succession certificates.

43. In India a similar tendency has manifested itself and there are at present in existence three duties which represent a stage of development halfway between the old fixed probate duty in England and the modern estate and succession duties. These are (1) the duty levied on probates and letters of administration, (2) the similar duty levied on succession certificates, and (3) the duty levied on certificates granted under Bombay Regulation VIII of 1827. These duties are leviable under articles 11, 12, and 12-A of the Court-fees Act of 1870.

The first two of these articles, prior to their amendment by certain local legislatures, ran as follows:—

Number	——	Proper fee.
1. Probate of a will or letters of administration with or without will annexed.	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds 1,000 rupees, but does not exceed Rs. 10,000.	Two per centum on such amount or value.
..	When such amount or value exceeds 10,000 rupees, but does not exceed 50,000 rupees.	Two and one-half per centum on such amount or value.
..	When such amount or value exceeds 50,000 rupees.	Three per centum on such amount or value.
2. Certificate under the Succession Certificate Act, 1889.	In any case	Two per centum on the amount or value of any debt or security specified in the certificate under section 8 of the Act, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.

These rates were increased in various provinces in 1922 by means of amending Acts. The enhancement in Bombay was progressive up to a maximum of 7 per cent in respect of amounts exceeding five lakhs of rupees,

* This is a very general description. For details of the order of precedence please see the Parsi Succession Act, 1865.

but was temporary for three years in the first instance. In Bengal, the minimum exempted from duty was raised in the case both of probate duty and succession certificate duty to Rs. 2,000, and the maximum rate of duty was raised to 5 per cent. Assam and Bihar and Orissa copied the Bengal model. The Madras amendment was limited to making a slight increase in the probate duty on estates between Rs. 5,000 and Rs. 50,000.

Article No. 12-A of the Court-fees Act prescribes the same fee for a certificate under Bombay Regulation VIII of 1827 as for a probate or letters of administration in that province.

Fees levied on registration of wills.

44. Under section 78 of the Indian Registration Act, Local Governments are empowered to prepare a table of fees payable for the registration of documents. In exercise of this power, they have fixed various rates of fees for registration of wills. Under section 80 of the Act these fees are payable on the presentation of wills for registration.

Amounts collected.

45. The total sums collected in 1923-24 under the first set of duties amounted to 36 lakhs of rupees, distributed as follows:—

	Rs.
Madras	2,35,653
Bombay	13,84,439
Bengal	15,32,207
Bihar and Orissa	35,652
Assam	34,457
Punjab	26,559
United Provinces	1,72,324
Central Provinces and Berar	19,170
Burma	1,83,804

The details by provinces for previous years are given in Annexure B.

These duties operate very unequally.

46. The operation of these duties, however, is extremely partial owing to the facts: (1) that in the case of the great bulk of the property that passes no will is executed; (2) that where wills are executed it is not always necessary to take out probate; (3) that even when probate is required, means of evasion of the law have been discovered; and (4) that in the case of intestate succession letters of administration are not necessary except in a very few cases. In this situation it becomes necessary to examine the circumstances in which the filing of one or other of these documents is compulsory.

Limitations of the Succession Certificate Act.

47. It will be convenient to take succession certificates first. Section 4 of the Succession Certificate Act, 1889, provides as follows:—

"(1) No court shall—

"(*a*) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming to be entitled to the effects of the deceased person or any part thereof, or

(*b*) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt.

"except on the production, by the person so claiming, of—

"(i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or

(ii) a certificate granted under section 36 or section 37 of the Administrator-General's Act, 1874, and having the debt mentioned therein, or

(iii) a certificate granted under this Act and having the debt specified therein, or

(iv) a certificate granted under Act XXVII of 1860, or an enactment repealed by that Act, or

(v) a certificate granted under the Regulation of the Bombay Code No. VIII of 1827 and, if granted after the commencement of this Act, having the debt specified therein.

"(2) The word 'debt' in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes".

Section 1 (4) of the Act provides that a certificate shall not be granted under the Act with respect to any debt or security to which a right can be established by probate or letters of administration under the Indian Succession Act, 1865, or a probate under the Hindu Wills Act. By Act VII of 1901 nothing in the above sub-section shall be deemed to prevent the grant of a certificate to any person claiming to be entitled to the property of an Indian Christian.

It will be seen that the operation of the Act is very limited. It makes a succession certificate necessary only in cases where a decree has to be obtained for payment of a debt or where such a decree has to be executed. A person may apply for a certificate for a particular debt only, and is not bound to take out a certificate in respect of all the properties of the deceased or even of all his debts. Where he has obtained a certificate for some of the debts, he can get it extended from time to time to other debts, the *only* condition being that he should pay a further duty for such extension.

The Act purports to be intended "to facilitate the collection of debts on succession and afford protection to parties paying debts to the representatives of deceased persons", and section 4 speaks of "the debtor, of a deceased person". The use of these words has given rise to doubts whether, where claims are based on survivorship, a certificate is necessary under the Act at all. And the authorities seem to be inclined to the view that a certificate is not necessary.

Again it has been held by the Madras, Bombay and Calcutta High Courts that a certificate under the Act is not necessary for the enforcement of a mortgagee's right against mortgaged property, though a full Bench of the Allahabad High Court (in 16 Allahabad, 259) has taken the opposite view.

Again the Act does not even require that a certificate under it should be filed before instituting a suit, and it has been held that it is sufficient if it is produced before the decree is passed. Creditors often take advantage of this provision, file suits, delay the obtaining of succession certificates until the opposite party either renews the debt in his own name or pays off the debt, and thus, not only evade the stamp duty due to the Government, but waste the time of the courts.

Moreover, it is a common practice for a creditor, who is armed with a certificate for the collection of one or more debts, to collect other debts not specified in the certificate; for in the eyes of people ignorant of the law, such a certificate is evidence of his being a legal representative of the deceased, while when they are not ignorant, the parties not infrequently share the duty. Thus, the payment of succession certificate duty to the State is again avoided.

Cases in which probates or letters of administration are necessary.

48. On the other hand, the provision of the Act which bars the grant of a succession certificate in cases in which it is open to the applicant to obtain probate or letters of administration under the Indian Succession Act or the Hindu Wills Act has the effect of compelling persons to whom these Acts apply to obtain probates or letters of administration when they have to seek the help of courts for the recovery of their debts. Moreover, courts in the presidency towns are not empowered to grant certificates under the Act, and the right of other courts to grant them is ordinarily limited by the fact that the deceased must at the time of his death have ordinarily resided within their jurisdiction. It results therefore that persons who are not by any statute obliged to take out probate or letters of administration are sometimes compelled to do so in order to recover specific debts or securities. In such cases they pay court-fee on the whole estate.

The Administrator General's Act.

49. The extent to which probates or letters of administration are compulsory may next be considered. Section 9 of the Administrator General's Act provides that, if any person, not being an exempted person*, has died leaving within any presidency† assets exceeding the value of one thousand rupees, and if no person to whom any court would have jurisdiction to commit the administration of such assets has, within a month after his death, applied in such presidency for probate of his will, or for letters of administration of his estate, the Administrator General of the presidency in which such assets are, shall, subject to any rules made by the Government, within a reasonable time after he has had notice of the death of such person and of his having left such assets, take such proceedings as may be necessary to obtain from the High Court at the presidency town letters of administration of the estate of such person.

The effect is that probate duty must be paid in respect of the property of all persons to whom this section applies, that is, on the death of any European, Eurasian, Armenian, Jew, or person of foreign domicile who dies leaving in India property exceeding Rs. 1,000 in amount.

The Indian Succession Act.

50. Sections 187 and 190 of the Indian Succession Act make probate and letters of administration indirectly compulsory in a few more cases. Those sections run as follows:—

Section 187.—"No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in British India shall have granted probate of the will under which the right is claimed, or shall have granted letters of administration with the will or with a copy of an authenticated copy of the will annexed."

Section 90.—"No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction."

It will be seen that under these sections probate or letters of administration are unnecessary unless rights as executor, legatee or administrator have to be established in a court of justice. It was held in I.L.R., 33 Mad., 91, that they have no application to the case of defendants setting up rights under a will, though in the case reported in 45 M.L.J., 175 at pages 180-181, this view has since been doubted.

Moreover, even when they do apply, the scope of their application is very limited. Section 331 of the Indian Succession Act lays down that the provisions of the Act shall not apply to intestate or testamentary succession to the property of any Hindu, Muhammadan or Buddhist. Section 332 further empowers the Governor-General in Council to exempt from the operation of the whole or any part of the Act, the members of any race, section or tribe in British India, or any part of such race, section or tribe, and under this several aboriginal tribes have been exempted. Further, the Native Christian Administration of Estates Act VII of 1901 declares section 190 of the Indian Succession Act inapplicable to "Native Christians" and enables them to apply for succession certificates under the Succession Certificate Act. Section 187 of the Act relating to wills, however, continues applicable to them.

The Hindu Wills Act.

51. Another Act which makes probate necessary in certain cases is the Hindu Wills Act, 1870, under section 2 of which section 187 of the Indian Succession Act is made applicable to a will or codicil made by any Hindu, Jain, Sikh, or Buddhist, on or after the 1st day of September 1870, within the territories of the Lower Provinces of Bengal or the local limits of the ordinary civil jurisdiction of the High Courts of Judicature at Madras and Bombay, and to all such wills and codicils made outside those territories and limits so far as they relate to immovable property situated within them. Thus, a Hindu who comes

---

* "Exempted person" means an Indian Christian, a Hindu, Muhammadan, Parsi or Buddhist or a person exempted under section 332 of the Indian Succession Act, 1865, from the operation of that Act.

† Under the definition of this word in section 2 (9) of the Act, the three Presidencies cover almost the whole of India.

within the ambit of this statute and claims to succeed under a will is required to pursue his claim under a law similar to that governing Parsis, Europeans, Eurasians, Jews, and Indian Christians.

In the year 1920-21 the total value of property on which probate duty (i.e., duty under Article 11 of the Court-fees Act) was paid in Bengal amounted to as much as Rs. 4,10,75,000, out of which property in land other than house property amounted in value to Rs. 24,01,000 and paid the duty in 38 cases. This shows to what extent the Hindu Wills Act has had the effect of bringing the property of Hindus in Bengal under the operation of the probate duty.

But the Act does not apply outside the Lower Provinces of Bengal and the presidency towns of Bombay and Madras, and cases have been known where persons ordinarily residing in these cities have gone out to the mufassal for the purpose of executing wills with the express object of putting themselves outside the pale of the Act, the property to be disposed of being situate outside these cities.

Bombay Regulation VIII of 1827.

52. There is one other Regulation, Bombay Regulation VIII of 1827, which provides for the "formal recognition of Heirs, Executors and Administrators and for the appointment of Administrators and Managers of Property by the courts", and for proof of wills and for registration of wills which have been duly proved. This Regulation applies to all communities in the Presidency of Bombay, though, since the passing of the Indian Succession Act and the Hindu Wills Act, it can only affect Muhammadans and those Hindus and others who are outside the scope of those enactments. Under it, any person claiming to represent a deceased person may, instead of taking out probate or letters of administration under the Probate and Administration Act of 1881 or a succession certificate under Act VII of 1889, apply under the Regulation to the District Court for judicial recognition as heir or executor. The certificate granted by the court under this Regulation is limited to the property to which the right of the heir, executor or administrator is recognised by the court and at present it makes very little difference as regards recovery of debts or dealings with securities, whether proceedings are taken under this Regulation or under the Succession Certificate Act. The Regulation carries the principle of compulsion no further.

Certain laws indirectly enforce representation.

53. Meanwhile, by virtue of the provisions contained in various special Acts, such as the Government Savings Banks Act, 1873, the Post Office Cash Certificates Act, 1917, the Provident Funds Act, 1897, and the Imperial Bank Act, 1920, the production of a succession certificate or of a probate or letters of administration can be insisted on as a condition precedent to the payment of money or transfer of shares to the heirs of a deceased person.

The measure recently introduced by the Hon'ble Mr. Sethna in the Council of State is likewise intended to ensure that insurance claims are paid only to accredited inheritors who produce succession certificates or probate or letters of administration in proof of their claims.

Summary of laws that require payment of duties.

54. To sum up, the effect of the enactments now in force may be stated thus:—

(1) *Whether or not any right of succession is sought to be established in court*, and whether the succession is testamentary or intestate.

Probates or letters of administration are compulsory in the case of estates of the value of over Rs. 1,000, belonging to persons governed by section 9 of the Administrator General's Act, i.e., in the case of Europeans, Eurasians, Jews, Armenians and persons of foreign domicile.

(2) *In cases where a right is sought to be established in a court*—

(a) Where the deceased has left a will, probates or letters of administration are necessary in the case of—

(i) all persons governed by the Indian Succession Act, e.g., Indian Christians, Parsees, and where the estate to be administered is of a value of Rs. 1,000 or less, Europeans, Eurasians, Jews, Armenians and persons of foreign domicile;

(ii) all Hindus where the Hindu Wills Act applies.

(b) Where the deceased has died intestate, letters of administration are necessary in the case of all persons governed by the Indian Succession Act other than Indian Christians.

(3) *In cases where probate or letters of administration are not compulsory under the above provisions, if a decree is sought to be obtained or executed for payment of money*, a probate or letters of administration or a succession certificate under Act VII of 1889 is necessary.

(4) Their production may also be insisted on under various special Acts such as the Government Savings Banks Act, 1873, the Post Office Cash Certificates Act, 1917, the Provident Funds Act, 1897, and the Imperial Bank Act, 1920.

In the Bombay Presidency, Bombay Regulation VIII of 1827 offers an alternative to the grant of probate or letters of administration or the issue of a succession certificate.

(5) *In all other cases*, the obtaining of a document of representation is wholly optional.

Application of these to communities.

55. To put the matter in another way, the communities may be ranked in the following order, having regard to the burden of taxation imposed upon them:

(i) *Europeans, Eurasians, Jews, Armenians and persons of foreign domicile.*—In cases of estates of the value of over Rs. 1,000, they are governed by section 9 of the Administrator General's Act and probates or letters of administration are necessary. In cases where the estates are of less value, they are governed by sections 187 and 190 of the Indian Succession Act.

(ii) *Parsees.*—They are not exempted persons under either section 331 or 332 of the Indian Succession Act and are governed by the compulsory provisions of sections 187 and 190 of the Indian Succession Act.

(iii) *Indian Christians.*—They are governed by the Indian Succession Act, and under section 187 of that Act are required to take out probate or letters of administration when they seek to enforce rights under a will. They are exempt from the operation of the compulsory provisions of section 190 regarding the obtaining of letters of administration in case of intestacy. They can apply for succession certificates under the Succession Certificate Act where they are forced to sue for the recovery of debts.

(iv) *Hindus, Jains, Sikhs and Buddhists.*—Those coming under the Hindu Wills Act are governed by section 187 of the Indian Succession Act in respect of testamentary succession, but section 190 of the Indian Succession Act does not apply to them. In cases not governed by the Hindu Wills Act, if they have occasion to sue for the recovery of debts, they are required to obtain either a probate or letters of administration or a succession certificate.

(v) *Muhammadans.*—Muhammadans are in the same position as Hindus not governed by the Hindu Wills Act.

Inequality of incidence among communities.

56. The inequality of the incidence of the tax which has thus been illustrated has long been a matter of complaint, which has resulted in one instance, that of the Indian Christians, in exemption by legislation. The complaint was only recently voiced in the Legislative Assembly by Mr. Ginwala, who said on 5th March 1923: "Take another source of revenue which has not yet been tapped, though it is the intention no doubt to tap it, and that is death duties. I do not see why, when I die, my son, who may inherit Rs. 5,000, has got to pay Rs. 100 or Rs. 150 to the Government, whereas the son of any one of these Honourable gentlemen who may inherit a million escapes entirely, if he is a Hindu or a Muhammadan. There is racial distinction, if you like. We are fighting for the removal of racial distinctions; let us fight on this point."

The burden is heaviest on the poorest members.

57. Nor is the inequality limited to the selection of certain classes for taxation. The tax also falls with undue weight upon the members of these classes who are least able to bear it. In England, estates not exceeding £100 net are exempt. On small estates, where the gross value does not exceed £300, a fixed duty of 30*s*. may be paid, inclusive of all other death duties. On estates, where the gross value exceeds £300 and does not exceed £500, a fixed duty of 50*s*. may similarly be paid. In India, on the other hand, a duty of 2 per cent has to be paid on the value of the smallest debt or security in respect of which a succession certificate is applied for. In the majority of provinces, a probate duty of 2 per cent is payable on estates of a value of over Rs. 1,000, though in Bengal, Bihar and Orissa and Assam the limit has recently been raised to Rs. 2,000. These fees are payable in addition to the fixed fee* payable under article 1 of Schedule II of the Court-fees Act on an application for probate or letters of administration.

Other defects in the law.

58. Nor is the mode of levy satisfactory. Section 19-I of the Court-fees Act lays down that no order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in court a valuation of the property in the form set forth in the 3rd schedule, and the court is satisfied that the proper fee on such valuation has been paid. There is no proper check on the full disclosure of assets in such schedule or on the valuation of such assets as are disclosed. Section 19-H no doubt directs a notice to be sent by every District Court to the Collector of the district in respect of every application for probate or letters of administration made to it, and in the case of the High Court to the Board of Revenue or the chief controlling revenue authority, but these authorities have not been given the necessary powers to make effective enquiry such as, to enforce the attendance of witnesses, to compel production of documents, or to issue commissions for examination of witnesses. Section 19-I expressly enacts that the grant of probate or letters of administration shall not be delayed by reason of any objection by the Collector to the valuation; and evasion of the duty in no way invalidates the grant. Further no rules exist as to the method of valuation of immovable property for purposes of an affidavit. Apparently the market value is intended to be given, but the practice does not seem to be uniform. Section 19-E contains provision for cases of undervaluation, but leaves it to the offender himself to apply for the proper stamping of the probate or letters of administration. The penalties provided in the section for delay in making the application are under the circumstances almost incapable of being put into force. Annexure B to section III of the affidavit exempts trust property from valuation, and the wording of it has given rise to doubts and conflicting decisions on the question whether, where joint-family property is included in the will of a Hindu, the whole of it or only the testator's share should be taxed. Most of these defects are sought to be rectified by the Bill to amend the Court-fees Act now pending in the Legislative Assembly, but it is not surprising that, with all these defects in the law, the amount that has been collected in the past in the shape of probate duties has not been more considerable than is shown in Annexure B, which has already been referred to.

PREVIOUS PROPOSALS FOR EXTENSION OF THE DUTIES.

Discussions prior to 1870.

59. The question of a succession duty in India was first raised in the year 1859 in connection with the discussions relating to the introduction of the income-tax. Mr. Wilson, who introduced the first income-tax, in his speech in the Legislative Council on 14th April 1860, discountenanced such a duty on the following grounds:—

(1) That it would be more difficult to assess than an annual income-tax;

* In the Bombay Presidency, this was fixed by the amending Act of 1922 on a graduated scale which rose to Rs. 10 in the case of applications for probate, etc., on estates of a value exceeding Rs. 5,000.

(2) that, if applied to land, it would aggravate the most glaring defects in the existing system of taxation which then drew so disproportionately from the land;

(3) that the succession duty had been tried in England and failed; and

(4) that such a duty would fall upon Indians only.

The last two arguments may be disposed of at once. The general introduction of succession duties in England had only been brought under discussion in 1853, and since that date, these duties, far from having failed, form now one of the most important and expanding sources of public revenue. The net receipts from death duties in Great Britain in 1921-22 and 1922-23 were £51,263,666 and £56,494,667, respectively, and constituted among the inland revenue duties the largest source of income after the receipts from the income-tax and super-tax. As for the argument that the duty would fall upon Indians only, that depends on the terms of the law enacted. Under those so far in force, the contrary has been the case. The question of taxing the properties of foreigners and that of the difficulty of assessment are dealt with elsewhere, as also is the question whether the extension of the existing duties on succession to landed properties would impose an unfair burden upon the land-holding class.

Proposals to impose succession duties were subsequently renewed, though not seriously considered by the Government, from time to time until the 19th October 1865, when Sir John Strachey in an important memorandum summed up the previous discussions on the subject and came to the conclusion—in his view unavoidable—that the general imposition of such a tax in this country would be objectionable in principle; that it could not by any possible means be assessed fairly in practice and that the amount which it would be likely to produce would not be sufficient to make it desirable to disregard the objections that existed to its imposition.

In the year 1866, a succession duty on lands exempt from the payment of revenue was proposed by the Government of India as one of the possible alternative ways of raising an additional revenue of a million sterling that was then required, and the proposal was circulated for opinion. The replies generally were to the effect that a limited succession duty as proposed was feasible, but that it would produce very little revenue. Eventually, the idea was given up in favour of a license tax.

In May 1867, the Chamber of Commerce, Calcutta, addressed a letter to the Government of India, recommending various expedients for improving the general revenues. One of these was the imposition of a succession duty.

On 20th September of the same year, the Government of India addressed the Secretary of State upon the proposal and pronounced against it. Their reasons were—

(1) that it would be difficult to assess and would be unpopular and harassing;

(2) that it would be paid from capital;

(3) that joint ownership and enjoyment of property in India results in the fact that, when a member dies, no one is usually richer by his death;

(4) that where lands were temporarily settled landed property paying revenue should not be taxed, as such revenue was already a fair contribution to the State and was periodically revised; and

(5) that the task of assessing personal property in India would involve enquiries of an inquisitorial nature.

All these objections will be dealt with later on. It may, however, be mentioned here that Sir Henry Maine, who was strongly opposed to the introduction of a general succession duty at the time, excluded Bengal from his objections; and thought that, owing to the existence of individual ownership and to the permanent revenue settlement, the duty might be tried in that province, a suggestion which was subsequently approved by Sir John Strachey in 1882 in his "Finances and Public Works of India from 1869 to 1881."

60. It was not long, however, before these opinions were changed. In 1870 there was passed the Court-fees Act, which imposed a duty of 2 per cent on probates and letters of administration which, it may be noted, was the equivalent of the then English rate. In his evidence before the Committee on East India Finance in 1873, Lord Lawrence referred to succession duties as having been constantly talked of in this country as a new source of revenue.

The Court-fees Act, 1870.

61. During the years 1879 to 1881 an attempt was made to extend the operation of the compulsory provisions contained in the Indian Succession Act regarding probate and letters of administration to persons not till then governed by it. That attempt was, however, given up on account of the opposition which it evoked, and under the Probate and Letters of Administration Act, which was passed in 1881, the obtaining of probate and letters of administration remained optional. In the discussions in Council connected with that Act, a proposal was also made to the effect that any person obtaining a certificate under Act XXVII of 1860, corresponding to the present Succession Certificate Act, should pay a court-fee, not only on the portion of the estate for which he was applying for a certificate, but upon the entire value of the estate. This proposal also met with opposition, and in the event it was decided that the certificate granted to an applicant should specify the debts in respect of which it was issued so that the holder thereof might not find it easy to utilise it for the collection of other debts, and that he should be at liberty to amend the schedule of debts by adding further debts on payment of a further fee—a decision which was embodied in the present Succession Certificate Act of 1889. When this Act was under discussion in the Viceregal Legislative Council, Sir Griffith Evans stated:* "It is not unlikely that means will some day be devised for bringing property held under Mitakshara law within the reach of a succession duty. I do not think the difficulties will be insuperable." He brought up the same subject on two other occasions, viz., in 1894, in the debate on the Financial Statement and in 1899 on the amendment to the Court-fees Act.

The Probate and Administration Act and Indian Succession Certificate Act.

62. The question of a succession duty has since been raised in various informal discussions, as for instance, in the year 1907, when the Hon'ble Dr. Rash Behari Ghose, in his speech on the budget, suggested in distinct terms the imposition of a succession duty on the estates of deceased Hindus and Muhammadans. By Act VII of 1910, the principle of graduation was introduced in the rates of duty levied under the Court-fees Act on probates and letters of administration, which till then, had stood at a uniform percentage, viz., 2 per cent, and the rates were raised on amounts exceeding Rs. 10,000, as follows: when the amount exceeded Rs. 10,000 and did not exceed Rs. 50,000, 2½ per cent; when the amount exceeded Rs. 50,000, 3 per cent.

Later discussions.

63. It was the introduction of the Reforms, however, that again brought the matter into prominence. The fact that a tax on succession and on acquisitions by survivorship was scheduled as a source of provincial revenue clearly showed that those responsible for the framing of the rules considered the imposition of such a tax, not only practicable, but probable and desirable, as a means of financing the new Governmental undertakings that were foreshadowed. The financial stringency following the war caused Provincial Governments to examine every means of increasing their resources. Consequently, in almost every province, the question of the possibility of introducing a succession tax began to be discussed. In Madras, a Committee was appointed to examine the question in 1922. They made a report recommending that a duty similar in character to the estate duty levied in England under the Finance Acts be introduced and made applicable to all communities alike.

The Reforms and after.

* Proceedings of the Council of the Governor-General of India, 1889, page 79.

On their recommendation, the Madras Government drafted a Bill, which however has not yet been launched in the Legislative Council. In Bengal, the question was examined by special officers in the year 1922 and their enquiries led to the appointment of a Committee to examine the whole subject in the year 1924. In Bombay, similar discussions led to the drafting of a Bill, in addition to which a special officer was appointed to enquire fully into the defects of the existing law. Meanwhile, the rates of probate duty were also increased in the manner already detailed. The Excise Committee appointed by the Government of Bombay in 1922-23 recommended a duty on succession as the most important tax to take the place of the excise revenue in future years. They stated: "We recognize the difficulties in the introduction of such a tax among a population predominantly subject to Hindu Law, but (a) the tax is one which presses most heavily on the persons most able to bear taxation, and (b) it is one which does not discourage thrift to the extent which much other taxation does. We are of opinion that it is not impossible for the Government with expert legal advice to devise a method of arranging the tax which will not lead to wholesale evasion nor to unjustifiable hardship on any particular community"*. The Compulsory Education Committee in Bombay (1922) also made a similar recommendation. Leading politicians have recommended the imposition of a succession duty both in the Legislative Asssembly and elsewhere. Mr. Ginwala's speech dated 5th March 1923 in the Legislative Assembly has already been referred to. The Hon'ble Sir Maneckji Dadabhoy, in moving the resolution in the Council of State in July 1923 to the effect that an enquiry should be made into the whole system of taxation in India, made use of the following language:

"The exemption of Hindus and Muhammadans from inheritance duty is the weakest spot in the British Indian system of taxation and most inequitable. The incontestable underlying principle of economic and equitable taxation is that a tax should be levied according to the ability of the tax-payer. Why then should our Hindu and Muhammadan brethren object to a duty on inheritance in cases where inherited property is able to bear a moderate duty for revenue purposes? It is notorious that all rich persons of the Hindu and Muhammadan community dying escape death duty, which is paid by all other classes of the community . . . . Such a principle of inequality would not be tolerated for a moment in any other country, and economists of all shades of opinion would have revolted against such inequality, had it been the case in Great Britain that one class fully able to bear the impost has escaped a just tax, while another not able to pay it was subjected to penalty for evasion.

"I venture to submit that a system could easily be devised whereby, in case of a joint family, the fiscal statute may be made uniformly operative without the destruction of the right of survivorship or any prejudice to the maintenance of the coparcenary status."

In 1923, a Bill was introduced in the Legislative Assembly which, speaking generally, provided for levelling up the duties leviable under the Court-fees Act on probates, letters of administration and succession certificates, to the rates in force in Bengal, and for removing the most prominent defects in the language of Chapter III-A of the Court-fees Act, 1870. The Select Committee which considered this Bill have recommended a reduction of the rates from 2 per cent to 1 per cent on probates and letters administration where the amount or value of the estate exceeds Rs. 2.000 but does not exceed Rs. 10,000, the adoption thereafter of a progressive rate rising by 1 per cent and the enhancement of the maximum rate from 5 to 6 per cent. A full schedule of the rates as amended by the Select Committee is appended—vide Annexure C.

THE OBJECTIONS CONSIDERED.

64. It has now been seen that duties on inheritance or succession are regarded in all civilized countries as one of the most suitable forms of taxation available; that there is nothing repugnant to their levy in India in either history or tradition; that they

Summary of the case for the tax.

* Report of the Excise Committee, Bombay, 1922-23, page 125.

are actually imposed on certain communities; that their extension to other communities has been many times considered and was finally put forward as an important factor in the taxation proposals of the Reforms; and that several Local Governments already have the imposition of such duties under contemplation.

It remains to consider the objections which have hitherto operated to prevent their extension. The objections that have been raised to the imposition of an inheritance tax in India are partly of a general character and partly peculiar to special communities.

General objections.

65. The general objections are—

(i) that the tax would fall upon the land which already pays its share;

(ii) that the valuation of movable property would be impossible without inquisitorial enquiries;

(iii) that the habit of investment is in its infancy; and

(iv) that reliable figures of income have yet to be obtained.

That the tax would fall upon the land, which already pays its share.

66. The first objection, namely, that the tax would press with undue hardship on the land, is undoubtedly the most serious one and, as has been seen, it is one that has been raised almost every time the subject of death duty taxation has been discussed.

Now, whatever the force of this objection some decades ago, it has lost most of it since the adoption, in the beginning of this century, of a policy of moderation in regard to assessments to land revenue. In the Punjab the percentage of net rentals taken by the Government in the shape of land revenue varied before resettlement from 13 to 27 per cent, the average being 17.8 for eleven districts which have recently been settled. After resettlement the average was only 25 per cent. In the United Provinces the percentage of revenue to rental value, which owing to various reasons is less than the economic rental, was on an average 27. In Bombay the percentage which assessment bears to rent varies from 17 to 50 per cent, while in Berar the average for two cotton taluks recently settled was as low as 10 per cent. In the Madras Presidency an enquiry made ten years ago showed that the percentage of assessment to rental in the case of all classes of leases taken together varied from 10.7 to 29, the percentage in half the districts being less than 17.1. In territories where the permanent settlement prevails, the share of the profits on land paid as revenue to the Government is even less, though even here it has been put forward as an argument against the levy of an inheritance tax that the zamindars have to pay local cesses, or that they are heavily indebted.

The argument that land should be exempt from the inheritance tax because incomes from land pay land revenue can at the present day have no more value than would the similar suggestion that industrial capital should be exempt from the inheritance tax because industrial incomes pay income-tax. The ownership of land passes from hand to hand so frequently that, in the case of most of the owners of land at present, the land is as much an investment as shares in a company or deposits in a bank, and the owners have bought lands with full knowledge that land revenue is payable thereon. The land revenue may in their case be said to have become absorbed in the lower selling price paid by them. There is, therefore, no reason to exempt land any more than buildings or other forms of investment. Nor is any scheme of inheritance taxation that may be devised likely to touch the smaller cultivators: and if the taxable minimum is fixed fairly high, the objection that the duty will press unduly heavily upon land cannot be regarded as a very serious one. Moreover in India the only other tax on land is the cess levied for local purposes, which in the temporarily-settled provinces is generally one anna in the rupee. In almost all European countries in addition to a land tax assessed on a cadastral basis there are heavy local rates, an income-tax on the net income from land, death duties and in a few cases a tax on the net income of the farmer.

That the valuation of movable property would be impossible without inquisitorial enquiries.

67. It is contended that the valuation of movable properties would be impossible without inquisitorial enquiries, involving the violation of domestic privacy, search of houses for accounts and the digging up of floors and walls. The valuation of personalty involves considerable difficulty in every country where such valuation is necessary for the purpose of taxation. It is true that, in India, an appreciable amount of personalty is locked up in the shape of jewels, vessels and cash, which are capable of easy concealment, and that, when these are traced out, claims may be forthcoming that they are not the property of the deceased, but the *stridhanum* or separate property of some female member of the family. But again, it is chiefly among the poorest classes that the habit of investing all savings in jewellery obtains, and if a fairly high exemption limit is fixed, it is likely to be much less prevalent among the classes that would be affected by the tax. Further, this argument does not sufficiently recognise what a tremendous change has occurred within the last few decades in the amount of investment in securities made by the inhabitants of this country. In this connection it will be of interest to study the following analysis of the nature of the property in respect of which probate duty was paid in Bengal in 1920-21. The total number of cases was 443 of which the details were as follows:—

	Number of cases including such property.	Value of property assessed to duty.
		RS.
(1) Cash in banks	162	9,57,000
(2) Government securities ..	166	35,31,000
(3) Property in public companies	173	1,96,07,000
(4) House property	175	78,35,000
(5) Land other than house property.	38	24,01,000
(6) All other property	..	1,02,35,000
		4,45,66,000
Deductions for debts, etc. ..		34,91,000
Total value of property on which duty was paid ..		**4,10,75,000**

That the habit of investment is in its infancy.

69. This leads on to the objection made in the course of the earlier discussions that the habit of investment is still in its infancy. A few figures* will show how far that can be regarded as effective at the present day. In 1923-24 the total value of Government paper in this country stood at Rs. 3,58,20,41,646, as against only Rs. 93,19,13,840 in 1883-84. The total amount of paid-up capital in joint stock companies, which stood at Rs. 40,17,40,650 in 1904-05, stood in 1923-24 at Rs. 2,54,56,69,603. Deposits in post office savings banks have risen from Rs. 4,33,77,000, the quinquennial average for 1882-83 to 1886-87, to Rs. 24,78,83,170 in 1923-24. Every year the number of new life assurance policies is on the increase, with the result that, while the sum assured in 1919 was Rs. 4,49,06,170, that assured in 1923 was Rs. 5,84,93,533. The total sum assured on life assurance policies exclusive of postal insurances at the end of 1923 stood at Rs. 51,83,78,748 as against Rs. 38,71,31,525 in 1921. On the 31st March 1923, there were 39,988 postal insurance policies in force, assuring a total sum of Rs. 6,82,23,639, including bonus additions. In the face of these figures, it can no longer be said that the habit of investment is in its infancy in this country.

That reliable figures of income have yet to be obtained.

70. It has also been contended that the assessment of death duty would be difficult because reliable figures of income are not available. At the best this was a reason for improving the machinery. Of late years, however, the strength of the objection has been

* Further details of these figures will be found in Annexure C.

greatly reduced by the reorganisation of the Income-tax Department; and the improvement may confidently be expected to continue. If the collection of a death duty is added to the functions of the department, that will be an added stimulus to improvement, and the two sets of figures will ultimately operate as a check on one another.

Objections peculiar to special communities.

Hindus.

71. The objections peculiar to special communities may now be considered. Generally speaking, they arise from the various personal laws in force, the chief of them being those connected with the law of the joint Hindu family.

(1) The argument that there is no mutation or acquisition such as gives occasion for the levy of death duties.

72. The death duties which have been examined take the form of a mutation duty, as in the case of the estate duty in England, or of an acquisition duty, as in that of the succession duty or legacy duty. It has been contended that neither of these ideas is applicable to the Mitakshara joint-family system, under which property is acquired by birth and not by death, and that there is in consequence no question of succession or inheritance. This necessitates an enquiry into the true nature of the interest which a member of a joint Hindu family possesses in the property of the family. So long as the family is undivided, he has a right to enjoy the family property jointly with the remaining coparceners. He can sell or mortgage his undivided interest in the family property, though he cannot dispose of it by will. In some provinces, e.g., Madras, he can even make a gift of it *inter vivos*. His creditor can attach it during his lifetime for his own separate debts and bring it to sale. The coparcener himself, or a purchaser of his interest by private or court sale, can have the amount of that interest ascertained by partition. And it has been held by the Privy Council that "a severance of estate is effected by a mere unequivocal declaration on the part of the coparcener himself of his intention to hold his share separately, even though no actual division takes place".* Again on a change of religion, the share of the party concerned becomes *ipso facto* severed from the shares of the other members. Under the circumstances, it is clear that a coparcener has an interest in joint-family property, which interest is capable of valuation. Nor can it be contended that on the death of a coparcener, the remaining coparceners do not secure an accretion to their interests. Their interests are enlarged, and if a partition took place immediately after a death, the share of each survivor would be greater than what he would have secured on a partition made before such death.

As has been already stated, the English law contains a provision by which the share of a deceased man in a property of which he was the joint tenant or joint owner, is regarded as falling within the category of property of which he was at the time of his death competent to dispose. Reference has also been made to section 3 of the Succession Duty Act of 1853, which treats acquisition by survivorship as succession for purposes of that Act. It is true that joint ownership, as understood in England, is not the same thing as joint ownership under the Mitakshara law, since the former arises by purchase and the latter generally by birth. But this consideration does not militate against the possibility or equity of taxing the share of an individual coparcener on his death.

(2) The argument that, if duty is to be paid on accretion through death of a coparcener, there should be a corresponding rebate on the occasion of a birth.

73. It may be argued that, if a duty is levied on the ground of accretion to the property of the surviving coparceners, by reason of the death of one coparcener, equity demands that compensation should be given when, on the birth of a new coparcener, their shares are reduced. A similar argument in the case of income-tax would lead to the unthinkable result that, since the Government levies income-tax on gains made by traders, they should also pay compensation to them whenever they incur losses. Further, if in the case of a joint

* Please see, e.g., I.L.R., 43 Cal., 1031; 43 I.A., 151.

Hindu family, only the share of the individual coparcener is taxed, it can easily be demonstrated by an example that, on a series of successions occurring in two similar families, one governed by the Mitakshara law and another by a different law, say, that applicable to the Indian Christian community, the payments in the latter case, where the whole estate passes on the death of its possessor, would greatly exceed those made on the shares passing under the Mitakshara joint-family law.

For the sake of simplicity take the case of a joint Hindu family the male members of which consist of the head of the family *A*, his only son *B* and his single grandson *C*.

If *A* died now and the present value of the joint property were *X*, the death duty on this property would be assessed on $\frac{1}{2}X$.

If *B* died thirty years hence, the amount to be assessed to duty at his death would be $\frac{1}{2} \times \frac{1}{4}X$; for the present value of a rupee to be realised thirty years hence is approximately 4 annas, the rate of interest being assumed to be $4\frac{1}{2}$ per cent.

Similarly, if *C* died thirty years after *B*, the amount to be assessed at his death would be $\frac{1}{2} \times (\frac{1}{4})^2X$.

Thus the sum of the amounts to be assessed on the deaths of *A*, *B* and *C* would be on $\frac{1}{2}X + \frac{1}{2} \times \frac{1}{4}X + \frac{1}{2} \times (\frac{1}{4})^2X = 2/3X$.

If however *A* and his descendants were all Christians, the total value of the estates on which duty would be assessed would be $X + \frac{1}{4}X + (\frac{1}{4})^2X = 4/3X$.

Thus the same property would pay twice as much duty if it belonged to a Christian. It can similarly be shown that, if *A* had two sons and these had two sons each, the duty that would be realised in the case of a joint Hindu family would be one-third that in the case of a Christian family.

(3) The argument that the occasions for the levy of the duty would be much more numerous than under other systems of law.

74. It has been argued that, owing to the high rate of infantile mortality in India, the occasions for the levy of the duty would be much more numerous than under other systems of law. This can be mitigated in two ways which will be discussed later, namely, first, by a reduction of the charge in the case of quickly repeated successions, and second, by imposing a limit of age of the co-sharers of joint Hindu families whose deaths should be taken as giving an occasion for levy of the duty. Meanwhile it may be noted again that, if only the individual share of each member is taxed on his death, the average amount of death duty paid by a Hindu family governed by the Mitakshara law will not be greater than that paid by a family governed by another system of law.

The difficulties of ascertaining the share of the deceased and the liabilities.

75. An objection which has more substance in it lies in the fact that, in a joint Hindu family, on the death of a coparcener, there may be considerable difficulty in arriving at the value of the net assets of the deceased.

On account of debts.

76. Under the Hindu law, debts borrowed by a member of a joint family may be binding, not only on the person borrowing, but also upon others. For instance, suppose certain debts have been incurred by a father in a joint family; they may be of three kinds:

(i) debts incurred by him for the purposes of the family;

(ii) debts incurred by him, not for the purposes of the family, but for his own purposes, which, however, were neither illegal nor immoral; or

(iii) debts incurred by him for illegal or immoral purposes.

Now, debts of the first and second classes are binding upon the sons' shares of the joint-family property, the first because they were borrowed by the father for family purposes, the second on account of what is known as the pious obligation of the sons to discharge their father's debts. The third are not binding upon the sons at all, but in some cases may be binding upon the separate property of the father. As regards other coparceners than the father, debts incurred by them will be binding upon the other members of the family if they have been incurred in the capacity of manager of the family and for the purposes of the family. There is no presumption that a debt contracted by a manager is for a family purpose. Again a debt incurred by a son will not be binding upon his father unless he has incurred it as the manager of the family and for a family purpose. It would, however, be binding upon himself. This being the law, there is a danger lest, on the death of the father or other coparcener, debts contracted by the deceased person for his own purposes should be represented as debts binding on the whole family, and further lest debts contracted by the surviving members should be claimed to be family debts, which would go to reduce the value of the net assets of the deceased. The decision of questions about the binding character of debts is fraught with very great difficulty even in courts of law and would, therefore, require careful investigation. But they do not create an insuperable difficulty in the way of introducing an inheritance tax among the Hindus. It may be of interest to examine a concrete case. Suppose a father dies leaving three sons and gross assets of the value of one lakh of rupees. His share of gross assets would be Rs. 25,000. Suppose he has left debts to the extent of (1) Rs. 20,000 binding upon the entire family, (2) Rs. 10,000 binding upon his sons on account of their pious obligation, and (3) Rs. 10,000, illegal or immoral, and not binding upon them, but binding on himself. How are the net assets to be calculated? If all the Rs. 40,000 worth of debts left by him be deducted out of his share, then his debts consume the whole of his assets. On the other hand, there is no reason why the Rs. 30,000 of debts falling under the first two categories, which are binding on the sons' shares of the family properties, should not be distributed among them also in proportion to their respective shares of the family property. If this is done, the father's share of the binding debts would be one-fourth of Rs. 30,000, that is to say, Rs. 7,500. His other debts, for which he alone would be liable, would be Rs. 10,000 and the balance of the assets would be Rs. 25,000 *minus* Rs. 17,500, that is, Rs. 7,500; and on this, estate duty would have to be paid.

Maintenance and other claims.

77. In valuing the net assets of a joint family, various kinds of claims to maintenance on the part of the members thereof will also have to be taken into consideration. For instance, according to Hindu law, widows of deceased coparceners and their unmarried daughters are entitled to be maintained out of the joint-family property; a widow belonging to the family is also entitled to reside in the family house and cannot be ousted except to satisfy more paramount claims. Unmarried daughters of the family are also entitled to portions for their marriage expenses, and on the *partition* of a joint Hindu family, all these rights are generally adjusted. In calculating the net assets of a deceased person, allowance would have to be made for all these liabilities.

Difficulty of ascertaining the value of life interests.

78. There would also be some difficulty in ascertaining the value of the property passing to or from a widow or other limited owner. As already pointed out, widows and daughters taking property by inheritance take only a limited estate, limited in duration to the lifetime of the person taking the property and limited in estate to mere enjoyment during life with rights of alienation of the *corpus* only for what may briefly be described as necessity, such as payment of debts of the deceased male holder, of the Government revenue and so on. In the case of a succession to or by a limited owner, it would be a question whether the whole property should be valued as though it were a fee simple, or whether it should be valued actuarially according to the expectation of life of the widow.

This question would become particularly important where two females succeeded to a life estate with rights of survivorship between them. For instance, two widows may succeed to their husband for a life estate, and on the death of one of them, the other may succeed to her right by survivorship; or two daughters may succeed to their father's estate with rights of survivorship to one another. The property passing at the death of one of the widows or daughters would not be equal to the whole value of the property. On the death of the surviving widow or daughter, the property would revert to the heirs of the last male holder.

Alienations by widows.

79. Alienations made by widows in favour of strangers may sometimes be binding upon the reversioners and sometimes not, according as the alienation was for approved purposes or not. In ascertaining the value of the estate passing to a reversioner on the death of a widow, the question of the validity of her alienations may have to be decided.

Facilities for evasion through *benami* transactions.

80. While in every country the ingenuity of tax-payers devises various means of evading the most carefully planned taxes, there will exist, as regards an inheritance tax in India, special facilities for evasion provided by the law itself. For instance, *benami* transactions are recognised by Hindu law and have been copied by Muhammadans also. They may be of two kinds: (i) transactions where, in the place of the name of the actual person to be benefited, the name of another person is inserted; and (ii) transactions which are not intended to take effect. It may not be an easy task to decide which properties standing in the names of strangers to the family or of individual members thereof are really joint-family properties and which not, especially as sometimes these transactions are entered into without any immediate or ultimate fraudulent motive. Two of the members of the Civil Justice Committee and one co-opted member, Sir Tej Bahadur Sapru, have appended a note to the Report of the Committee, recommending that *benami* transactions should be prohibited; but even they have added the following limitation to their recommendation: "Nothing in the prohibition shall debar a member of a joint Hindu family from pleading or proving that the property standing in the name of its *karta* or manager or any other member of the family belongs to the said family, or that the property in the name of a stranger to the family belongs to it, if the said member could not, by due diligence, have avoided the name or names being introduced in the documents or their being executed"*. The question of deciding whether a transaction was *benami* or not may give rise to difficulty, but it might be possible to enact that the authorities administering the inheritance tax should decide the question after a summary enquiry and that, on their decision, a suit would lie in a civil court within a limited period, say, three months. A refund might be ordered if, as a result of that suit, the property was excluded from the estate of the deceased.

Claims of self-acquisition.

81. A similar device may suggest itself with respect to claims made by individual members of a joint family regarding the family or self-acquired character of particular items of property. For instance, an individual member may claim a family property as his own self-acquisition and seek to withdraw it from the operation of the death duty, or the surviving members of a family may claim a self-acquired or separate property of a deceased member as joint-family property and thereby seek to reduce the *quantum* of property liable to be taxed. These questions may be difficult of decision, but are not sufficient, by themselves, to deter the State from undertaking legislation to impose a death duty.

Alleged oral partitions and relinquishments.

82. According to the Mitakshara law, the father of a family may effect a partition at any time between himself and his sons, and every member of a joint family has a right, by a mere unilateral declaration communicated to the other members, to separate himself from them. As the law now stands, a partition in a joint Hindu family can be effected without a document in writing and registered. If it is proposed that only the individual share of the deceased coparcener at his death should be taxed to succession duty, this state of the law would not by itself introduce any complication. But surviving members might assert that at the partition the deceased person had consented to take and had obtained a much lower share than he would otherwise have become entitled to. In fact, according to Hindu law, a member may even relinquish his whole share in favour of the remaining coparceners. All such cases of total or partial relinquishments of shares might be treated as gifts of the portion relinquished and the same law might be made to apply to them as to gifts.

* Report of the Civil Justice Committee, 1924-25, page 609.

83. It is needless to add that gifts *inter vivos* might also be resorted to as a method of evading the duty unless that was prevented by the imposition of a similar duty upon them.

Gifts *inter vivos*.

84. The total surrender or relinquishment of a life estate by a widow in favour of the next reversioner has the effect of accelerating his or her succession and might be resorted to as a method of evading death duties. Questions might arise as to how such relinquishments should be treated. There would be some difficulty in treating a relinquishment as a gift. The widow has nothing to give except her life interest; but what the reversioner secures as a result of the relinquishment is not merely the life interest of the widow, but the interest which, as a reversioner, he or she is entitled to, and the reversioner secures it, not as a donee from the widow, but as heir of the last male owner. By her relinquishment in favour of the reversioner, the widow, as it were, effaces herself and accelerates the latter's succession. If the person in whose favour the widow gives away her life interest is a stranger, that stranger would become entitled only to enjoy the estate till the widow's death, and need not pay any death duty at all. If, by virtue of the relinquishment, the reversioner, like a stranger, got nothing more than the widow's life estate, he or she likewise need not pay any death duty. What he actually secures, however, is a succession to the estate at the time of such relinquishment. In England, the release of a life interest in favour of a reversioner is treated as a gift, and the question has to be determined whether it should be treated in the same way in this country. This will be dealt with later.

Relinquishment by a widow and acceleration of the reversion.

85. The case of joint families under the laws prevailing in Malabar raises even greater difficulties. The distinctive feature of the joint-family property under those laws, as compared with joint-family property under the Mitakshara law, is that there cannot be a partition of the family property except with the consent of all the members of the family. In other words, no member of the family has a right to demand or enforce a partition. Similarly, no member has a right to alienate or will away his share, nor can such a share be proceeded against for his separate debts. In the absence of a right to demand partition, it may seem inexpedient to tax, on the death of a member, of a *tarwad*, his undivided interest in the *tarwad* property. If, on grounds of equity, it is considered necessary to tax *tarwad* properties, the best course seems to be to make a periodical valuation of them, say, once in thirty or thirty-five years, and levy a rate of duty thereon similar to that which is levied on inheritances in the case of other communities, and to make the duty payable by annual instalments distributed throughout the period of the settlement. Such a levy may be likened to the corporation tax levied in England and in some other countries on property held in such a manner as to render its devolution on death impossible. In making the assessment, the number of persons who claimed maintenance out of the *tarwad* property would have to be taken into consideration, and a fair proportion of the property exempted from taxation on that account.

Difficulties under the Malabar law.

Difficulties under the Muhammadan law.

86. Two special difficulties connected with the Muhammadan law may also be mentioned:

(i) The Muhammadan law of inheritance recognises so many heirs and so many limitations on the portions inherited by them that in particular cases of succession, the shares of individual heirs may work out to very small sums. In such cases, a provision like the one contained in section 13 of the English Finance Act of 1894 might enable the Government to overcome the difficulty of assessing and collecting the tax. The section, in effect, provides that, where, by reason of the number of deaths on which property has passed, or of the complicated nature of the interests of different persons in property which has passed on death, or from any other cause, it is difficult to ascertain exactly the amount of death duties, the Commissioners of Inland Revenue may fix a composition to be paid in full discharge of all claims for such duties.

(ii) According to the Muhammadan law and under the Muhammadan Wakf Validating Act VI of 1913, it is competent to a Muhammadan to create a *wakf* for the maintenance and support wholly or partially of his family, children or descendants, provided that the ultimate benefit is in such a case expressly or impliedly reserved for the poor or for any other purpose recognised by the Muhammadan law as a religious, pious or charitable purpose of a permanent character. No such *wakf* is to be deemed to be invalid merely because the ultimate benefit for the poor or for such purposes as aforesaid is postponed until after the extinction of the family, children, or descendants of the person creating the *wakf*. When property is dedicated by way of *wakf*, the ownership is deemed to be transferred from the dedicator to the Almighty, and the property cannot be alienated or attached.

In the case of *Abdul Fata Mahomed* v. *Rasamaya* (1894), 22 Cal., 619, their Lordships of the Privy Council said: "If a man were to settle a crore of rupees, and provide ten for the poor, that would be at once recognised as illusory. It is equally illusory to make a provision for the poor under which they are not entitled to receive a rupee till after the total extinction of a family; possibly not for hundreds of years; possibly not until the property had vanished away under the wasting agencies of litigation or malfeasance or misfortune; certainly not as long as there exists on the earth one of those objects whom the donors really cared to maintain in a high position. Their Lordships agree that the poor have been put into this settlement merely to give it a colour of piety, and so to legalise arrangements meant to serve for the aggrandisement of a family." Private *wakfs* such as those described by their Lordships were invalid before the Muhammadan Wakfs Validating Act of 1913, but appear to be valid under the above-mentioned Act. They are in reality mere settlements of property in perpetuity in favour of one's heirs and relations. There is no reason why they should not pay estate duty until the actual charity, as distinguished from mere support of the family, comes into operation. Nor is there any reason why, when a portion only of the income from a property is dedicated to a religious or charitable purpose, the proportionate fraction of the value of the property corresponding to the portion of the income which is not dedicated should not be taken into account for purposes of estate duty. The value of the benefit accruing to individuals from death will, if their interest extends to the whole income of the property, be the principal value of the property; and, when it extends only to a part thereof, its proportionate value. Private *wakfs*, in so far as they are not for purposes which are ordinarily regarded as charitable or religious may thus be treated as settled property for purposes of inheritance taxation.

87. In the above note an endeavour has been made to bring out fully the difficulties that may arise, both in the ordinary course of business and by way of evasion, in applying the principles of a succession duty to a population governed by diverse and complex systems of inheritance. There is no disguising the fact that cases of extreme complexity may arise and that the department that administers the law will need the assistance of competent legal advisers. On the other hand, it must be remembered that these difficulties will arise only in exceptional cases; that similar difficulties have arisen in other countries and have been met, partly by legislation and partly by the employment of competent legal officers; and that even in India no small number of typical cases is actually being dealt with at present by the Administrators-General. There is no reason to suppose, therefore, that the difficulties pointed out are in any way insurmountable, and it is now proposed to examine the means by which they can be surmounted.

Summary

PROPOSALS.

88. The first question to be considered is whether death duties in India should take the form of a transfer or mutation duty, or a succession or acquisition duty, or both. The vast majority of the inhabitants of the country are governed by the Mitakshara law of joint-family property. In their minds, the fact of acquisition of property on *death* is obscured by the

The nature of the duty to be taken.

constant emphasis laid on the acquisition of property by *birth*. To them the family is the continuing owner of the properties, and on the death of a coparcener, there is no change in the ownership of the property, but only a change in the names of the persons who represent the owners. In other words, the notion of a transfer or mutation duty is likely to be more acceptable to the Hindu mind than taxation of a right acquired by succession. The calculations connected with the division of property among the heirs and the minute fractions into which the shares of particular inheritors may run under the Hindu law, and still more under the Muhammadan law, may also be mentioned as arguments against the imposition of an acquisition duty as distinguished from a transfer or mutation duty. It may, therefore, be concluded that death duties in this country should take the form of an estate duty rather than of a succession or legacy duty.

The question remains whether a legacy or succession duty should be levied in addition to an estate duty. Such an additional levy is obviously capable of justification on purely theoretical grounds. For instance, estate duty may be regarded as the share due to the State in the proceeds of accumulations of wealth which would hardly have been brought about save with the protection and aid given by the State; while a succession or legacy duty can be justified as a tax levied on the inheritor of an estate in respect of the gratuitous acquisition derived by him after the State has made succession smooth for him. But it is a matter for consideration whether in India it would be expedient, at the initial stages, to levy both estate and succession duties and thereby increase the opposition which any proposal to introduce these duties is likely to evoke.

The limit of exemption.

89. The next question for consideration is the limit of the amount up to which exemption should be granted for purposes of death duty. The suggested limits of exemption vary from Rs. 1,000, which is recommended by the draft Bill of Bombay, to Rs. 25,000, which is recommended by the draft Bill of Madras and by Mr. Kinney in Bengal. Between these two limits various others have been suggested. In the Statement of Objects and Reasons of the Madras Bill, the reason for fixing the limit at such a high figure as Rs. 25,000 is given as the novelty of the tax in India and the desire to make the incidence of it fall on those that can best afford to bear it. It may be recognised that the unpopularity of the tax in the initial stages would be very much minimised if the limit of exemption were fixed at as high a figure as possible. But the Madras limit seems to be too high. The proper basis of exemption would appear to be that so much property should be left free as would be sufficient for an ordinary family with average diligence to support itself upon, or in the case of land, the value of an economic holding.

Graduation of the duty.

90. The next question to be considered is whether the graduation of the duty should have reference to the value of the estate passing on the death of an individual or to the degree of relationship between him and the inheritor. Owing to the existence, side by side, in this country of numerous systems of inheritance in which the position of a given relative is not uniform, and owing also to the existence among certain communities of a law of legitim and the absence of it among others, it is not easy to graduate the duty according to the degree of relationship. For instance, among the Hindus, a widow or a daughter of a deceased person cannot succeed to any part of his share of the joint-family property, though as regards his self-acquired property, they hold a very high place in the order of succession. But even in regard to the self-acquired property, a widow or a daughter is entirely excluded if a son exists. In the case of succession under the Muhammadan or Indian Christian law, the widow or daughter receives a share along with the son. In Malabar, under the Marumakkathayam law, a sister's son comes in even before the son. Under the ordinary Hindu law, a sister's son would be postponed to an agnate of the fourteenth degree. Thus, it would be very difficult to arrive at a uniform classification of heirs and a satisfactory scale of graduation according to relationship which would apply to all communities in this country.

So far as legacies are concerned, they are seldom made in this country in favour of strangers, and when so made, they are generally of small amounts and made for special reasons.

In the United States of America, the Federal inheritance tax has taken the form of an estate duty graduated on the amount of the estate passing, without reference to the relationship between the deceased and the inheritor. And the reason why this is the case may be sought in the existence of a multiplicity of succession laws, which differ from State to State, and the consequent difficulty of devising a common scale of exemptions which would satisfy public opinion. In Ceylon, where death duties were introduced in 1919, there is no graduation according to relationship. Nor is there in the Straits Settlements. Nor do the existing probate and administration duties in India recognise any such principle.

Graduation by relationship.

91. If, however, it is considered desirable to recognise the principle of graduation by relationship, the plan adopted in the case of the Federal duties in Australia might be followed. There, there is a provision that, in respect of so much of the estate as passes to the widow, children or grandchildren of the deceased, the duty should be assessed and payable at two-thirds of the rate which would otherwise be payable. A provision on somewhat similar lines has been embodied in clause 19 (2) of the Madras Estates Duty Bill as follows:—

(a) "Where the person from whom the duty is leviable is a husband or wife of the deceased, or is a lineal ancestor or lineal descendant of the deceased male or female traced through the male or female line, or is a husband or wife of such ancestor or descendant, the duty shall be leviable at the rate mentioned in sub-section (1).'.

(b) "In all other cases the duty shall be leviable at thirty-three and one-third per cent in excess of the rate mentioned in sub-section (1)."

It will be seen that this provision covers a wider field of relationship than the Australian law. One other way in which a distinction can be made in favour of near relations in the case of an estate duty is by exempting from taxation in their case a larger minimum than in the case of more distant relations. For instance, if the ordinary limit of exemption be fixed at Rs. 5,000, that in cases where sons, daughters or widow would succeed might be fixed at Rs. 10,000, the rates of duty remaining unchanged for larger amounts.

Rates of estate duty.

92. As regards the rates of duty, it may be taken as generally accepted policy that estate duties should be progressive. The scale proposed in the Court Fees Amendment Bill as revised by the Select Committee (vide Annexure D) may be taken as a basis for discussion.

Rates of legacy duty.

93. If a succession or legacy duty is also introduced, it may also be made progressive and may vary with the degree of relationship to the deceased. Eight classes of relationship or heirship may be recognised somewhat as follows:—

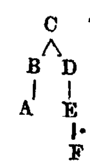
(i) Husband or wife, father, mother, own legitimate son or daughter.

(ii) Grandfather or grandmother, grandson or granddaughter or any other direct ancestor or descendant, adopted son or daughter.

(iii) Brother or sister.

(iv) Father's or mother's brother or sister, brother's or sister's son or daughter, step-son or step-daughter, or the husband or wife of any person in (ii) and (iii).

(v) Any person who is related to the deceased by not more than five steps, one of which should be a common ancestor (thus F would be related to A by five steps), or the husband or wife of a person in (iv).



(vi) Any person who is related to the deceased by not more than seven steps, one of which should be a common ancestor, or the husband or wife of any person in (v).

(vii) Husband or wife of any person in (vi).

(viii) Any other person.

A scale of progression for these classes is set down below as a basis for discussion.

Percentage rate to be paid by the legatee or successor when he or she is of class

	I	II	III	IV	V	VI	VII	VIII
Rs								
First 1,000	..	..	..	..	..	..		
Second 1,000	..	..	..	2	3	4	5	6
Next 3,000		..	2	3	4	5	6	7
„ 5,000	2	3	4	5	6	7	8	9
„ 10,000	3	4	5	6	7	8	9	10
„ 20,000	4	5	6	7	8	9	10	11
„ 30,000	5	6	7	8	9	10	11	12
„ 50,000	6	7	8	9	10	11	12	13
„ 1,00,000	7	8	9	10	11	12	13	14
„ 3,00,000	8	9	10	11	12	13	14	15
„ 5,00,000	9	10	11	12	13	14	15	16
Amount in excess of Rs 10,20,000.	10	11	12	13	14	15	16	17

Property to be assessed.

94. All property situated in India, whether movable or immovable, irrespective of the deceased's domicile, and all movable property, wherever situated, of persons domiciled in British India, may be made liable for death duty, whether such property passes on death by succession, survivorship or otherwise. This leaves immovable property in other countries subject to the law of those countries.

Except in the case of joint-family property of a Hindu governed by the Mitakshara law, there would be no difficulty in finding out, in respect of a given property, whether it passed on the death of a deceased person or not.

In the case of joint-family property.

95. In the case of joint-family property in the possession of a Hindu governed by the Mitakshara law, however, the valuation would not be equally easy, owing mainly to the existence therein of co-ordinate interests. Take the case of a joint family consisting of a father and sons governed by the Dayabhaga and the Mitakshara, respectively. In the case of the former, the property of the family will wholly vest in the father with full powers of alienation, and his sons cannot claim a share thereof from him during his lifetime. He can dispose of it *inter vivos* or by will. On his death the property that passes is the whole of the property. Under the Mitakshara law, however, the sons have equal rights with the father during his lifetime. They can claim a partition of their shares from him. He cannot alienate anything more than his own share except with the consent of his sons or for family purposes. For the debts legally incurred by him, his creditors can no doubt proceed against the whole of the family property, inclusive of the shares of his sons. But that is due, not to his ownership of the whole property, but to the sons' liability under Hindu law for the legal debts of their father. Their shares are liable to be attached for their father's debts, because, on account of their pious obligation to discharge them, the debts become indirectly their own debts.

Three alternatives are suggested.

96. Three suggestions have been made: (1) to proceed as if the Dayabhaga law was in force, (2) to tax the whole property on the death of the managing member, and (3) to tax the share of the deceased as though partition had taken place on the day of death.

To proceed as if the Dayabhaga was in force.

97. The first suggestion would involve the taxing on the death of a coparcener who is topmost in the scale the whole property or share of property belonging to his branch. In other words, in a family consisting of a father and two sons, full duty would be paid on the whole estate on the death of the father. Afterwards, full duty would be paid on the share of each son on his death without regard to the existence of further descendants. The objection to this suggestion is that it levies death duties on the basis of a law of devolution of property which is different from the law actually applicable to the parties. Under other systems of death duty taxation, it is the property of the deceased man passing on his death that is liable for the duty. Properties which are independently owned by the inheritors under a title paramount to that of the deceased cannot be taxed on his death. Now, the interest in family property which passes to the heirs of the coparceners under the Mitakshara law is not the whole of the property of the family, but only the share which the deceased would have secured had a partition taken place just before his death.

Even if Hindus governed by the Mitakshara law were taxed as if they were governed by the Dayabhaga law, the Hindu joint family would be in a somewhat better position than a Christian family or a family under any other system of law than the Mitakshara, since members of the Mitakshara joint family can claim partition, while in the case of other communities any share given to the son would be in the nature of a gift. It is possible that, in order to escape death duties, partitions would soon become the normal course in Hindu joint families as soon as the sons came of age.

To tax the whole property on the death of the managing member.

98. It has also been suggested as another method of securing equality that estate duty in the case of a joint family under the Mitakshara law should be made payable only on the death of the manager of the family. The chief objection to this proposal lies in the fact that in most joint families there is no person actually nominated as the manager, and the so-called manager is generally only the member of the family who is most ready to take the lead. Moreover, the manager as such has no more power over the joint-family property than any other member. Such powers as he possesses as manager accrue to him as a mere agent of the joint family and are limited to the purposes of the agency. He is not the owner of the entire family property. Of course he can alienate the whole for family purposes, but so can any person who is the accredited agent of the joint family. In several families again it might be difficult to find out who the manager was. Oftentimes, the manager of the family may be a younger member of the family where an older member, by reason of temperament or absence from the family house, is unable to look after the family property. Further, the proposal might result in a too frequent levy on the family property. To take an example, suppose *A*, *B* and *C* are brothers and each has children. *A* is the manager and dies. Duty is collected on the whole property. Then *B* becomes manager and dies. Duty is again collected on the whole property. Then *C* becomes manager and dies. Duty is again collected. And so on at the death of each eldest male member of the family, thus resulting in the attempt to remedy one inequity producing another. On the other hand, since the manager need not be the senior coparcener, it would be easy to evade the law, by appointing the juniormost member as the manager and by his transmitting the managership before his death to another junior member.

To tax the share of the deceased as though partition had taken place just before his death.

99. In these circumstances, the most acceptable alternative seems to be to tax the share of the deceased as though partition had taken place just before his death.

The question whether special allowance should be made for the death of minors.

100. The Advocate General of Madras suggested in his evidence that exemption from duty might be granted in the case of deaths of all members below a certain age, but this proposal appears to go beyond the necessities of the situation. To take the extreme

case in which there are only two coparceners, there can be no objection to taxing the share of an infant brother or infant nephew or other more distant coparcener, when on his death such share passes to a brother or uncle or other more distant relation by survivorship. There is no particular equity or sentiment in favour of such relations which would justify their exemption from duty. The brother or uncle or other relation receives the share of the deceased person by a fortuitous circumstance, the fact of a premature death, and may well be made to pay the legitimate duty on what in several cases may be a windfall. Real sentiment against the taxation of the share of an infant exists only in the case of an infant's death during the lifetime of his father *and* grandfather. In such a case, the share of the infant may be regarded as having become merged in that of the father. In other words, if *A* has a son *B* and a grandson *C*, on the death of *C* no estate duty should be paid at all, because, though *C* had a right to claim partition, his share was included in that of *B*. It would be sufficient, therefore, to grant exemption in cases in which a coparcener who is a minor as defined in the Indian Majority Act, dies during the lifetime of his father and another lineal male ascendant, who is joint with him.

When deaths occur in rapid succession.

101. On the analogy of the law already summarised in regard to quick successions, a provision may be made in this country also, that where a property or share passes on death, such property or share, if it has already paid estate duty within a period of five or eight or ten years, may be exempted from a corresponding portion of the estate duty otherwise due.

The case of Malabar.

102. It has already been suggested that, in the case of *tarwad* property in Malabar, a tax periodically assessed in the manner of a corporation duty should be levied.

Properties of foreigners.

103. As regards properties of foreigners, there is a conflict of principles concerning the questions whether the property of a deceased man should be taxed in the country where he had his domicile, or in the country where he acquired the property or in that in which the property is situated. In the case of immovable property the prior claim of the country in which it is situated has received practically universal recognition. This will be readily appreciated when it is remembered that one of the fundamental principles of taxation lays it down that the payment of a tax to the State involves the reciprocal duty of protection on the part of the State levying the tax: and thus it is that immovable property as such is not taxed outside the jurisdiction within which it is situated. As regards movable property, however, the question is not equally settled. The old rule expressed in the maxim *mobilia sequuntur personam,* by which personal property was regarded as subject to the law of the owner's domicile, grew up in the Middle Ages when movable property consisted chiefly of goods and tools which could be carried by the owner from place to place or secreted in spots known only to himself. In modern times, owing to the great increase in the amount and variety of personal property, not always immediately connected with the person of the owner, that rule has yielded more and more to the *lex situs,* the law of the place where the property is kept and used. The question of economic allegiance, the obligation of an individual to pay taxes to the competing States according to his economic interests in each State, is by no means an easy one, especially in its application to inheritance taxes. But in practice, in most countries, for purposes of taxation, personal property is separated from its owner and is taxed at the place where it is, although that may not be the place of his domicile. This, for instance, is the position in France, in the United States of America, in Japan and in England. In England estate duty is a successor of the old probate duty which, throughout the entire two hundred years of its existence, was a payment made in exchange for a permit from the competent court to take possession of and administer the estates situated within the court's jurisdiction, entirely regardless of the nationality, domicile or residence, either of the deceased or of the beneficiary. By virtue of a special provision in the Finance Act, 1894, however, it is also levied on movable property situated outside the country of persons domiciled within the country. This is because the law of succession to movable property generally depends upon domicile, a position which has been recognised by section 5 of the Indian Succession Act, 1865, which enacts as follows:—

"Succession to the immovable property in British India of a person deceased is regulated by the law of British India, wherever he may have had his domicile at the time of his death.

"Succession to the movable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death."

Situation of intangible property.

104. The question of the situation of intangible property has constantly given rise to difficulty, not only in England, but also in other countries. A broad indication of the lines followed in England in determining its locality or situation (according to British law) may be gathered from the following general propositions:—

(*a*) The locality of a security payable to bearer, or other security transferable by delivery, is determined by the actual situation of the document of title at the time of death.

(*b*) The locality of a security transferable by entry on a register (e.g., an ordinary share in a public company) is determined by the actual situation of the register.

(*c*) The locality of a debt, or other right enforceable at law, is the place where the right of recovery can be enforced.

Domicile.

105. Domicile is a legal conception and denotes the relation which the law creates between an individual and a particular locality or State. In English-speaking countries, it is an inference drawn from two factors (1) the *factum* of residence and (2) the intention of residence (*animus manendi*). In the words of Story, that place is properly the domicile of a person in which his habitation is fixed without any present intention of removing therefrom. The difficulty of determining domicile often arises from the difficulty of ascertaining the existence of the very indefinite intention which constitutes the *animus manendi.* No person can at any time be without a domicile. It is therefore necessary for the ascertainment of domicile that every person should be made to start from an origin imposed by law, such as the domicile of the person's father, after which his own movements may be investigated with a view to determining a change of domicile. Therefore, the subject of domicile branches from the beginning into a domicile of origin and a domicile of choice. A change of domicile is not a simple matter, and the animus required for acquiring a new domicile must be an intention to reside in another place in the fullest and most permanent way. The intention need not be to change political allegiance or to subject oneself to another system of law or to identify oneself with the social ideas and habits of another country. Kindersley, V.C., stated in *Drevon* v. *Drevon* (1864) 34 L.J. 129 (133): "There is no act, no circumstance in a man's life, however trivial it may be in itself, which ought to be left out of consideration in trying the question whether there was an intention to change the domicile". In practice, however, there exist various rules with the help of which questions of domicile, both of origin and of choice, can be decided, and in India these rules are set forth in Part II (sections 5 to 19) of the Indian Succession Act, 1865. In French law, a distinction is made between legal and actual domicile. The legal domicile is the result of a legally authenticated change that is requested by the individual. The actual domicile in France denotes the principal or habitual residence. In countries where payment of a tax is determined by domicile, the term domicile may not always possess the technical attributes which it does in England and may, as in Holland, mean nothing more than mere residence. It is clearly desirable that, if double taxation is to be avoided, domicile should be interpreted on uniform principles. In the absence of an international definition, it is necessary to define it in India, so that there may be no doubt about the liability in India of persons whose domicile may not be certain. In framing a definition of domicile, it is obvious that equitable considerations as to liability to taxation cannot altogether be ignored. Reference has already been made to the objection raised in this country as long ago as 1859, to the imposition of an inheritance tax on the score that such a tax would not

fall upon foreigners. The fact cannot be denied that many persons of foreign domicile reside and do business in this country and amass money, but invest it elsewhere, and that their properties would escape an inheritance tax even if they died in India, should they be held to have a domicile elsewhere than in this country. It is only equitable that the Government in this country should have a share of the property which it has helped them to acquire. But, though an attempt to levy an inheritance tax in the country of acquisition would be quite a legitimate one, yet it is undesirable that, for the purpose of achieving this, the definition of domicile in India should be so enlarged as to be quite different from the definition of domicile in other parts of the British Empire. It has been suggested that, for the purposes of taxing personal property on the death of its owner, domicile should be defined in India as residence or having a place of business in India for a prescribed number of years before death. Such a definition would not ensure, that only movable properties acquired in India but situated outside, would become liable for the tax. On the whole it seems desirable to have the same test of domocile in this country as obtains in the other parts of the Empire.

Articles of national, scientific, historic or artistic interest.

106. Provision may also be made for the exemption, as in England, from valuation for the purposes of estate duty of articles which are ascertained to be of national, scientific, historic or artistic interest.

Gifts.

107. As regards exemption of gifts from valuation for the purposes of death duties, the law in England may be stated thus:

(a) Gifts made by the deceased during illness in contemplation of death and intended only to become absolute in case of death are deemed to be included in property passing on death.

(b) So also gifts made by the deceased *inter vivos,* without reservation to himself, within three years preceding death.

(c) But gifts made for public or charitable purposes more than twelve months before death, gifts made in consideration of marriage, reasonable gifts proved to have been part of his normal expenditure and gifts not exceeding a hundred pounds in value in the case of any donee, are excluded from the operation of the above rule, i.e., rule (b).

(d) Gifts made by the deceased *inter vivos* at any time, if *bona fide* possession of the gift was not immediately assumed and thenceforth retained by the donee to the entire and irrevocable exclusion of the donor, are valued as property passing on death.

The only points on which a modification of the law may be necessary in this country are—

(i) as regards the time with reference to which a gift should be rendered invalid for inheritance taxation, and

(ii) as regards gifts or bequests for religious or charitable objects.

As regards (i), the period of three years prescribed by the English law seems too long for this country. In the Provincial Insolvency Act, the time with reference to which alienations by insolvents are presumed to be invalid, until the contrary is proved, is two years prior to the date of the application for insolvency. For purposes of inheritance taxation, one year prior to death may perhaps be regarded as sufficient. In other words, gifts made by the deceased within one year before death should be treated as property passing on death.

As regards (ii), that is, gifts for charitable and religious purposes, the English law says that they are exempt provided that they are made more than twelve months before death. In other countries, the exemption is not so absolute. In France, properties bequeathed to the State or gifts to approved co-operative societies for reconstruction after the War and other gifts of that kind, are exempted. As regards other charitable bequests, however, they have to pay a duty at the rate of 9 per cent. Charitable bequests would include bequests to hospitals, to educational societies of public utility subsidised by the State, to workmen's building societies and so on. In Holland, bequests and donations to provinces and communes,

(exclusive of special trusts, or bequests for purposes which, in the opinion of the Finance Minister, are not purposes of public utility), and donations in favour of "a legal person", which is primarily an object of general social utility or is primarily a benevolent institution, or is concerned with the care of the sick or infirm, are exempt. The Crown also has the right to remit or reduce the duty payable on account of the acquisition of objects of artistic or scientific value by societies or foundations which, as a general rule, allow the public to view the objects in their possession free of charge, and the duty payable on account of donation to "a physical person", where it is satisfactorily proved that it is merely designed to supply a livelihood to the donee, who has exhausted his own means of subsistence, and on account of age, sickness or other cause is not in a position to earn a living by work.

It is for consideration whether in this country, charitable and religious bequests or gifts should be treated as exempt or not.

The provisions of the Indian Succession Act which invalidate bequests in favour of charities where there is a nephew or niece or nearer relative surviving unless there is a will executed twelve months before death and registered six months from date of execution may be recalled to mind in this connection.

Unregistered partition and release deeds should not be recognised for purposes of death duties.

108. As already pointed out, oral partitions by which a deceased member took less than his share, and relinquishments of shares or interests either total or partial, should be treated as gifts. A difficulty in the practical application of these principles will arise from the fact that in several cases there will be no reliable evidence to prove the gift or partition or relinquishment. So far as immovable property is concerned, under section 123 of the Transfer of Property Act, deeds of gift are already required to be in writing and registered. As regards the other classes of transactions above referred to, such as partitions, relinquishments, etc., the Civil Justice Committee have recommended: (a) that in the case of partitions of family properties, where the immovable property to be divided is of a value of over a thousand rupees, registered partition deeds should be made compulsory; (b) that any release by a member or members of a Joint Hindu family of his or their shares, and all family settlements, should be in writing and registered. The limit of exemption for death duty taxation will exclude cases in which the immovable property of the joint family does not exceed a thousand rupees. Therefore, there need not be any hesitation in recommending that no partitions or relinquishments of family rights should be recognised for the purpose of death duties except those represented by registered instruments. In the case of similar transactions relating to movables, it does not seem desirable to recommend registration. The question of the validity of gifts of movables will, under the circumstances, have to be decided with reference to the facts of each case.

Policies of insurance.

109. Special reference is necessary to the way in which policies of insurance should be dealt with. Under the Finance Act of 1894, in England, the money secured by a policy of assurance is an interest within the meaning of section 2 (1) (d) of the Act, which provides that property passing on death shall be deemed to include "any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other persons, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased", and is taxable. Moneys secured by policies of assurance are taxable in France and Holland also. Where a policy has been assigned, a question of some difficulty arises. The English rule is that moneys received under a policy of assurance effected by the deceased on his life, where the policy was wholly kept alive by him for the benefit of a donee, whether nominee or assignee, or a part of such moneys in proportion to the premia paid by him, where the policy was partially kept up by him for such benefit, are liable to estate duty. In other words, the claim for estate duty is restricted to so much of the policy money as, by a proper apportionment, is attributable to the premia paid by the deceased. In Holland, the value of a policy, where it has

been assigned, is determined by deducting from the amount of the policy (i) any amount by which the property of the person entitled to it is reduced before the acquisition of the benefit, and (ii) the amount on which donation duty was paid or payable by the beneficiary on account of the acquisition of rights derived from the policy during the lifetime of the insured.

The best course for adoption in India appears to be, where a policy has been assigned, to treat the assignment as a gift. If it was made beyond the prescribed period before the death of the deceased, it would be valid and would not count for estate duty except to the extent of any premia subsequently paid by the deceased for the purpose of keeping it alive. If the assignment was made within the prescribed period before death, then the whole amount of the policy should be treated as liable for estate duty, any premia paid by the assignee being treated as a debt due to him.

THE MANNER OF ASSESSMENT.

Valuation of property.

110. The question of valuation of property for purposes of death duty may now be considered.

In England.

In England, under section 7 (v) of the Finance Act of 1894, estate duty is levied on the principal value of the whole aggregate estate, and principal value means, with certain unimportant exceptions, the price which the Commissioners of Inland Revenue consider the property would have fetched if sold in the open market at the time of the deceased's death.

Under the Court-fees Act.

For the purpose of levying institution fees on suits, the Court-fees Act lays down different principles of valuation of property which vary according to the nature of the property in suit. For instance, it provides that for the purposes of court-fees in suits for possession of buildings, the market value should be taken into account. In suits for movables, the same is the test. In suits for possession of land, the valuation of the land is, where it is temporarily or permanently settled, a multiple of the assessment, where it is land situated in a zamindari, which land is not separately assessed, its market value, and where it is inam land, fifteen times the net profits of the preceding year, but where no such net profits have arisen, the estimated value of the land. In suits on leases, the valuation for purposes of court-fees is, generally speaking, the rent for a year. Thus, there is no uniformity in the valuation of lands for the purposes of court-fees under the Court-fees Act. Court-fees in relation to probates are collected under Articles 11 and 12 of Schedule 1 of the same Act, but the principle on which properties should be valued for the purpose of this duty is nowhere laid down. The intention seems to have been that probate duty should be levied on the market value of the properties included in the schedule to the application for probate.

Proposals made in respect of land.

111. The proposals made for the levy of death duty in India have differed on this subject of valuation of properties for the purposes of the duty. For instance, a Bill drafted by Mr. Kinney, the Administrator-General of Bengal, contained a provision, clause 19, whereby the value of the property was to be estimated at the price which, in the opinion of the Collector, such property would fetch if sold in the open market at the time of the death of the deceased. The Madras Estates Duty Bill contained different provisions for the valuation of (*a*) ryotwari lands, (*b*) inam lands, (*c*) estates as defined by the Madras Estates Land Act, and (*d*) ryoti lands in an estate, and concluded by providing that all other immovable property should be valued in such manner as might be prescribed. Clause 20 of the Bill drafted in Bombay left it to the Local Government to make rules for the purpose of prescribing the methods of valuing property and interests therein. One of the witnesses before the Committee, Mr. C. V. Viswanatha Sastri, suggested that,

for the purpose of valuing permanently-settled estates, the principle of market values should be followed, while in the case of ryotwari lands, ten times the assessment should be taken as th value.

Leaving the question of valuation to be determined by rules made by each Local Government is not a very satisfactory procedure, as it is desirable, in matters connected with the administration of an inheritance tax, that there should be uniformity of procedure in valuation of the estate and assessment of the tax. There remain the following alternative ways of fixing the value of immovable and especially landed property—(1) according to assessment, (2) according to the market value, and (3) according to net return.

Obviously movable properties will have to be assessed in accordance with the market value. The value of buildings *may* be estimated in accordance with the annual rental, but the fixing of rent in the case of luxurious inhabited houses would be difficult. It may, therefore, be desirable to accept the criterion of market value as regards them also. And on the whole it seems desirable to accept the same principle in the case of agricultural lands. It has been seen elsewhere that the attempt to base value on a multiple of revenue paid in the case of court-fees leads often to a *reductio ad absurdum*. To base the value of land on its net income would lead to inquiries no less prolonged or difficult than to base it on its market value. Where lands are subject to a mortgage, simple or usufructuary, the amount of the mortgage may often exceed the value of the lands arrived at on the assessment basis. The acceptance of the market value principle may involve the taxing authorities in difficult enquiries, but if the principle is accepted and followed for some time, its working will soon cease to give trouble. On the whole, therefore, it seems desirable to accept the English principle of valuation of properties for purposes of death duty in accordance with the market value. But in order to avoid difficulties over the introduction of the tax in the less advanced areas, it might be desirable to provide that the Local Governments might make rules for the arbitrary valuation of land in specific areas or classes of cases.

Securities and business interests.

112. The valuation of securities can be effected with reference to the official quotations for the day on which the deceased died.

As regards business interests, the deceased's share will be the sale value of his interest in the business, and this will have to be determined by expert valuers with reference to the account books, balance sheets, etc., relating to the business. The valuation of other movable properties in accordance with the market price of similar goods will not be difficult.

Allowances.

113. It has already been pointed out that, in calculating the net assets of a deceased person, allowance will have to be made for his reasonable funeral expenses and for his debts and other liabilities binding upon his estate.

For funeral expenses.

(*a*) As regards funeral expenses, a scale of maxima graduated on the total value of the estate may be prepared and an allowance given accordingly.

For marriage of unmarried daughters.

(*b*) The valuation of the marriage allowance to be made for unmarried daughters would depend on the wealth and status of the family and the amount of expenditure customarily incurred in the family in previous instances.

For claims of maintenance.

(*c*) The valuation of maintenance rights would involve, first, the ascertainment of a rate of maintenance which would be consistent with the wealth of the family, the position and status of the widow and all other circumstances connected with the case, and second, the capitalization of this with reference to the age of the maintainee. If the rate of maintenance had already been fixed *bona fide* by a decree of court or by private arrangement, that should be accepted, In many cases, the maintenance would be payable, not only out of the share of the deceased coparcener whose estate was liable to tax, but by other coparceners also. In those cases, only the proportionate share for which the deceased's estate was liable should be taken into account. The Succession Duty Act, 1853, in England, contains tables for the valuation of annuities framed under section 31 of the Act. Similar suitable tables might be drawn up in this country for valuing maintenance rights in accordance with the age of the maintenance holders. Or maintenance claims might be valued, as in Holland, by multiplying the annual amounts of maintenance by factors graduated with reference to age. The right of a widow to dwell in the family house may be ignored.

Valuation of limited interests.

114. In the case of succession to full owners by limited owners and of succession to limited owners on their death by their reversioners, the question of the valuation of the estate passing requires special consideration. In the case of an estate duty, as distinguished from an acquisition duty, it is the estate passing on death that is taxed, and not the estate that is acquired. The logical inference from this would be that, where a widow succeeds to a life interest in the estate of a full owner, the value of the whole estate belonging to the last owner, and not merely the value of the interest acquired by the widow, should be taken into account in levying the estate duty. This course is further necessitated by the fact that, in this country, the estate of an owner dying may consist both of self-acquired or separate property and of interests in joint-family property. While the former may pass to a widow or other limited owner, the latter may pass to a full owner. It would be illogical to value the estate passing on the death of such a person on the full value of the property or interest passing so far as the male successor is concerned and on the capitalised value of the life estate of the widow so far as the widow is concerned. In France, the value of a life estate is treated as equivalent to a fraction of an inheritance in fee, and a scale is fixed by which this value is reduced in accordance with the age of the limited owner. Below is the scale:—

Where the age of the limited owner does not exceed		20 years.		The value of the life interest to be 7/10ths of the value of the whole property.	
Where the age of the limited owner exceeds 20 years, but does not exceed		30	,,	6/10ths	,,
,, 30	,,	40	,,	5/10ths	,,
,, 40	,,	50	,,	4/10ths	,,
,, 50	,,	60	,,	3/10ths	,,
,, 60	,,	70	,,	2/10ths	,,
,, 70	,,	..	,,	1/10th	,,

This valuation appears to apply only in the case of the acquisition duty and not in that of the estate duty.

Where on the death of a widow or other limited owner, property passes to a reversioner, whether such reversioner be a limited owner or a full owner, the whole estate may again be valued and not merely the widow's limited interest. The widow is to all intents and purposes the owner of the estate, and is not a trustee for the reversioners. Having regard to the fact that, in every case of succession by reversioners after the death of a widow, the reversioner will be a relative further removed than a son, grandson or great grandson (vide page 14) there is no reason why any concession should be made in the valuation of the estate.

Where a widow has relinquished her interest in favour of the next reversioner, such relinquishment should be treated as a gift, as in England. If the relinquishment is in favour of a stranger, there would be no difficulty as the reversioner would be entitled to get from the stranger the property relinquished, on the ground that the relinquishment was not effected for a necessary purpose.

Settled property.

115. The question of death duty upon property which is settled may next be considered. In England, prior to the year 1914, there was a **settlement estate** duty, which consisted of a special duty of 1 per cent payable upon all settled property, in addition to the estate duty, which was payable only once during the course of any particular settlement. This procedure was, however, abolished by Mr. Lloyd George in 1914, since which year settled property has been treated just like any other property, the only special treatment which is accorded to it being that, where, in the course of any particular settlement, the estate duty has been paid upon the death of one of the parties to a marriage, it is not again payable on the death of the other party to the marriage. In supporting the amendment of the law which effected this change, Mr. Lloyd George said: "As a matter of family custom or tradition, there is no difference in the way in which property passes in the case of both settled and unsettled estates . . . On the merits, is there any reason why we should allow a man, simply by the production of a document transmitting property in his family in exactly the same line, to deprive the State of money which is required for public purposes and for the good of the community? It is unfair to the owner of the unsettled property"; and he added that there was a further injustice in that settlements were more prevalent among the rich than among the poor, so that the rich escaped a tax which the poor paid.*

Where a portion of the income of a property is dedicated to religious or charitable purposes and the rest left to the heirs of the settler, then the portion which is not dedicated should be valued for purposes of the estate duty, and estate duty collected thereon. In other words, the value of the benefit accruing from death will be, if the interest extends to the whole income of the property, the principal value of the property; when it does not extend to the whole property, the value for duty will be proportionate.

How charitable and religious gifts should be treated has already been considered. If a portion of the income of a property is dedicated to religious or charitable purposes by a will or a document executed within one year of the death of the deceased, the property corresponding to that income should also be liable for death duty.

The possibility of composition.

116. For the purpose of avoiding hardship in petty cases and prolonged inquisitorial inquiries regarding the properties and debts left by deceased persons, certain methods of composition followed in other countries may be considered—

(1) As in England, a fixed duty may be levied on small estates not exceeding a prescribed gross value, and it may be enacted that payment of such fixed duty will exempt the estate from all death duties whatsoever, thereby obviating the necessity for inquiries into the existence and value of debts, maintenance claims and so on.

(2) Section 13 (1) of the Finance Act of 1894 also contains a provision which might be of great use in India. That provision is as follows:—

"Where by reason of the number of deaths on which property has passed or of the complicated nature of the interests or from any other cause, it is difficult to exactly ascertain the amount of estate duty payable, or so to ascertain it without undue expense in proportion to the value of the property", the Commissioners may compound.

A proposal appears to have been made, but not accepted, in Belgium some time ago to give to lineal descendants the option of compounding for a succession duty of 1 per cent on the net assets by payment of a duty of ¾ per cent on the gross assets. The optional fixed duty in England adopts this principle in the case of small estates. It would have this advantage that heirs would be enabled to avoid inquisitorial enquiries into the position of their affairs soon after the death of one who might have been the most important member of their family. But as this alternative would be taken advantage of only when the State was likely to lose by it, it is for consideration whether the option should not lie with the taxing authorities as under section 13 (1) of the Finance Act which has been quoted above.

---

*Hansard, 1914, Volume 64, pages 1792 and 1793.

THE METHODS OF ENFORCING PAYMENT.

Extension of the existing law, the simplest.

117. Various methods have been suggested of enforcing payment of death duties. The most obvious and the smoothest method is to extend the existing system of compulsory probate or letters of administration to all communities alike. At present probates or letters of administration are insisted on only in the case of certain communities and not others, and the result is that the probate duty now levied is in large part determined by race or religion. Looking at the matter purely from the point of view of political expediency, it seems desirable to place the representation of all deceased persons upon an equal footing irrespective of race or religion, always preserving to the Hindus, Muhammadans, Buddhists, Sikhs and Jains, their own laws and customs of inheritance.

Compulsory representation a benefit in itself.

118. A compulsory representation of estates would be of manifest convenience to the communities themselves. Their laws of inheritance recognise a plurality of heirs and interests requiring protection, and this fact renders an intermediate representation to some extent necessary. At present, among the Hindus, dishonest debtors and tenants and designing relations are able to promote litigation as they find facilities for trafficking in family dissensions, in the existing law of adoption, self-acquisition and reversionary rights. A compulsory system of representation would put an end to their activities. In the case both of Hindus and of Muhammadans, it would be of practical value to the honest debtor as an indemnity; it would clothe the nearest entitled relative or him who had the greatest interest in the estate with a representative capacity which must be of the greatest use and assistance in dealing with strangers, either creditors or debtors of the deceased's estate, instead of leaving the estate to be got in and distributed by such fortuitous means as may be available. Besides, where property has to be sold to discharge debts or even for the purpose of making a division of the property, the purchaser in dealing with a duly appointed legal representative, instead of with a class of people claiming to be interested in the estate, would have a more secure title, and this security would in turn lead to an enhancement of the value of the property. It would save the estate from loss and spoliation. It would also solve a very difficult question which arises where a Hindu or Muhammadan suitor, plaintiff or defendant, dies and it becomes necessary to appoint a representative to carry on the suit or to defend it. At present, it not seldom happens that persons uninterested in the property are placed on the record and the suit or proceeding goes on, much to the detriment of the property, to a decision which lacks the finality which decisions of courts should possess. Under the circumstances the advantages in India of an intermediate representation among the Hindus and Muhammadans cannot be exaggerated.

The case of Hindu wills.

119. So far as probates are concerned, the sooner they are made compulsory the better. Wills are not required by law to be registered, and the only way of preventing spurious wills being set up years after death is to require that wills should be admitted to probate before they are acted upon, and within a prescribed period of time. As the Civil Justice Committee pointed out at page 469* of their report, "With no system which compels any person to place before a judicial tribunal a testamentary instrument within a reasonable time following the death of a testator it is not unusual for wills to be put forward many years after". A system of probate would largely exclude perjury and fraud attendant on the oral will, and further it would make certain the character and powers of executors and administrators, which in the absence of a codified law relating thereto is naturally in a state of uncertainty.

As far as Hindu wills are concerned, they are a creature of the English law and are of a comparatively recent date. There is no inconsistency in declaring that the right to property created by a Hindu will should not be complete until it has received judicial sanction and ratification. The

Hindu Wills Act has already extended the compulsory provisions of the Indian Succession Act as to probates to Hindu wills made, or relating to property, in the presidency towns of Madras and Bombay and in the Lower Provinces of Bengal. Such extension appears to have excited neither observation nor opposition.

In a generality of cases wills are made by the rich and literate, and to compel probate of such wills would not involve much hardship, especially as such compulsion would have other compensating advantages.

The Civil Justice Committee have stated in paragraph 8, Chapter XXXVIII of their Report: "Unfortunately when we come to consider whether probate of such wills should be made compulsory, the question of law reform meets a question of finance. . . . Considering the matter entirely in the interest of the administration of the law, it appears to us, however, to be a pity to rule out an extension of the provisions of the Hindu Wills Act to provinces outside Lower Bengal for purely financial reasons." The exemption of a reasonable minimum of property from death duties would go a long way to meet the financial objection that may be raised to the proposal to make the compulsory law of probates universal for all Hindus.

The case of Muhammadan wills.

120. On the question of extending the compulsory law of probate to the Muhammadans, the Civil Justice Committee state "Whether it would be in any province possible or worth while to apply such rules to the Muhammadan community is a matter for special consideration by the local Governments." The Muhammadans have an elaborate system of testamentary law, which includes provisions relating to executors, and in consequence are already acquainted with a system of representation in cases of testate succession. In view of the advantages already described, and especially as the introduction of the system would not interfere with their law of beneficiary succession, it may be hoped that Muhammadans would not have any objection to a system of compulsory probate. It may be pointed out in this connection that the optional provisions of the Probate and Administration Act of 1881 have in several instances been taken advantage of by Muhammadans in the same manner as by Hindus.

The case of intestacy.

121. There next arises the question of a compulsory system of letters of administration in cases of intestacy. The main objection that has been raised in the past to the introduction of a system of compulsory system of letters of administration in cases of intestacy, has been that the introduction of such a system "would impose on the multitude of poor and ignorant people in cases where there had been no difficulty or dispute an unnecessary amount of trouble and expense". This objection will not hold good in case the limit of exemption for obtaining compulsory letters of administration be raised to a reasonable amount.

Probates were at one time compulsory in both cases.

122. From the year 1726 when Mayors' Courts were established by Charter in the Presidency towns, they appear to have exercised jurisdiction in granting probates and letters of administration in respect of the estates of even Hindus and Muhammadans dying in the Presidency towns. In 1774 the Mayor's Court at Calcutta was abolished and a Supreme Court was established in its stead. The charter establishing that court empowered it to exercise ecclesiastical jurisdiction in the provinces of Bengal, Bihar and Orissa, and to grant probates and letters of administration to the estates of British subjects dying within the said provinces. This law was held to include British subjects of all races, and in a case relating to the goods of Bee Bee Muttra (1832) reported at page 192 of Morton Montriou's reports, it is stated that, between January 1775 and July 1782, there were more than 200 probates and letters of administration granted of the wills and effects of Hindus and Muhammadans in the Supreme Court at Calcutta. Prior to the year 1781 the law administered by the Court of Calcutta

---

* Report of the Civil Justice Committee, 1924-25, page 469.

appears to have been the Common Law of England; but by the amending Act of 1781 it was enacted that, in matters of succession and inheritance to lands, rents and goods and *in matters of contract and dealing* between party and party, Hindus and Muhammadans should be governed by their own respective laws. After this Act it appears to have been doubted whether the Supreme Court could exercise probate juridiction at all in the case of Hindus and Muhammadans, and there appears to have been a cessation of the practice of granting probates and letters of administration for several years. But from about the year 1816 the practice revived. The history of probate jurisdiction in Madras and Bombay may generally be said to have followed the same course as in Calcutta. There the Mayors' Courts continued to exist till 1797, when they were replaced by Recorders' Courts. The Recorder's Court of Madras existed for two years, while that of Bombay existed till 1823, when Supreme Courts were established in these places also. The charters establishing the Supreme Courts and the subsequent charters establishing the High Courts conferred probate jurisdiction over native inhabitants of India in the three chief provinces; and thus even *prior* to 1865, when the Indian Succession Act was passed, a system of representation was *not unknown in this country.*

And in 1865 compulsory probate was generally considered desirable.

123. When the Indian Succession Act, 1865, was under the consideration of the legislature, it was proposed to extend to the native inhabitants of India the testamentary provisions of that Act inclusive of the provisions *making it compulsory* to take out probates and letters of administration in certain circumstances, but such extension was postponed pending the collection of fresh evidence on the policy of the contemplated measure. A few months after the passing of the Act, a circular, dated 22nd August 1865, was issued from the Home Department of the Government of India *to the several local Governments respecting the extension;* and the general result of the opinions obtained in reply to this circular was, among other things, that probate should be made compulsory, and that the provisions of the Succession Act as to administration with will annexed and as to the powers and duties of an executor should be extended with some slight *modifications. If the proposal was acceptable in 1865,* there is no reason why it should be unacceptable now.

Apart from the question of death duty, therefore, a system of compulsory *probate seems desirable in this country.*

The difficulty of the joint Hindu family.

124. There are, however, two objections to a system of compulsory letters of administration in cases of intestacy which have to be mentioned. Both of them arise from the joint-family system under the Mitakshara law. To impose upon a member of a *joint Mitakshara family* the duty of producing formal evidence that he is entitled to administer property of which he is already in possession, *per my et per tout*, would *prima facie* seem to be unnecessary, especially in a case where the applicant may happen to be himself the manager of the family properties.

Secondly, where a member of a joint family dies, intestate, leaving both separate and joint properties, there will be two separate sets of heirs for the two kinds of property, respectively. For instance, supposing a Hindu *belonging to a Mitakshara joint family died, leaving a brother* and a widow and both separate and joint property, in law the widow would be the heir to the separate property by succession, while the brother would be entitled to the joint property by survivorship. It is obvious that letters of administration can affect only the separate property of the deceased and be required only from the heirs to such *property.*

Accordingly, on the analogy of section 4 of the Probate and Letters of Administration Act, 1881, joint-family properties may be exempted from the compulsory requirement of letters of administration.

In the case of joint-family properties, the manager or the surviving heirs may be required to make a *declaration* of the value of the share of the deceased member in the joint-family properties, and a duty may be levied on the value of the properties mentioned in such declaration.

The authorities who should administer the law.

125. At present only District Judges have jurisdiction in granting and revoking probates and letters of administration, though the High Court has statutory power to appoint judicial officers in any district to act as delegates of the District Judge for the purpose of granting probates and letters of administration in non-contentious cases. There is therefore no difficulty as regards giving District Munsifs and Subordinate Judges jurisdiction up to limited amounts. It has been suggested, however, that if the present law were extended as proposed, the existing courts would be unable to cope with the work falling on them, especially as the collection of death duties through probates would involve a scrutiny of inventories and accounts. It must be remembered in this connection that applications for probate, etc., would mostly be uncontested and that there would be some diminution in litigation on the introduction of a compulsory system of representation. If, however, additional probate registrars are required to deal with non-contentious cases, it would be best to appoint revenue officers of the rank of tahsildar as probate registrars with a limited jurisdiction for granting probate and letters of administration in such cases. Applications might initially be presented to these revenue officers, but in contentious and doubtful cases they might be required to submit a statement of the case to the court having jurisdiction and to proceed thereafter according to the instructions issued by the court.

This would have another advantage also. In England and other countries the collection of death duties is facilitated by the existence of a provision for their collection by instalments. Under section 18 of the Bengal Settled Estates Act, the stamp duty payable on settlements made under that Act can be collected in instalments extending up to three years. At the time when the Court-fees Amendment Bill of 1899 was on the anvil of the legislature Mr. Rees suggested that there should be power to take security for the probate duty payable under the Court-fees Act and for postponing the collection of the duty itself to a later date. He pointed out that such a plan was not unknown to fiscal legislation. Sir James Westland, however, opposed the suggestion on the ground that civil courts would not, like revenue officers, take the responsibility of seeing that the security was sufficient for purposes of the revenue. He added that, if the whole matter was handed over to the revenue officers, he would then have no objection whatever to giving to revenue officers power to take security *rather than insist upon the money being paid down beforehand.* The conferring of jurisdiction on revenue officers to entertain applications for probate, etc., would facilitate the payment of death duties in instalments or the taking of security for the duties.

In England, applications for probate are ordinarily made to Probate Registrars, and when contested, they are transferred to the regular courts. The machinery proposed above would be *somewhat similar* to that in England.

A compulsory system of representation would be very advantageous from the point of view of the Government, as, in case the system was introduced, the Government could look to an accredited representative of the deceased to make the necessary declarations regarding the value of the property and for payment of the duty.

The legislation necessary.

126. If probates and letters of administration are to be made compulsory, the result may be achieved—

(a) by introducing into the Probate and Administration Act of 1881 provisions similar to those contained in sections 187 and 190 of the Indian Succession Act, subject to exemptions in favour of estates of a value less than a prescribed sum; and

(b) by the introduction of a provision such as is contained in section 3 of the English Stamp Act, 55 George III, Chapter 184, under which a penalty is prescribed for taking possession of or administering the effects of a deceased person without obtaining probate or letters of administration within six months of the death.

These provisions would appear to be reasonably sufficient for the purposes of the revenue, but as sections 187 and 190 of the Indian Succession Act apply only in cases where resort is had to a court to establish a right to the property of a deceased person, it may be deemed desirable also to extend the provisions of section 9 of the Administrator-General's Act in a modified form to the communities to whom it is inapplicable at present. This section makes it obligatory on the Administrator-General to obtain probate or letters of administration in respect of the estates of deceased persons other than those exempted in cases where no person entitled to the same has applied for them. A universal extension of this provision would enlarge the duties of the Administrator-General so considerably as to necessitate the appointment of several officers to cope with the work involved. Further, with the work of administration, the Government would in fairness have to take up the liabilities for bad administration. Section 39 of the existing Administrator-General's Act imposes such a liability on the Government. As a means of avoiding the difficulties that might result from these provisions, in case it is considered desirable to make some provision for cases for which the proposals mentioned in the previous paragraph are felt to be insufficient, optional power might be conferred on the Administrator-General to apply for probate or letters of administration in cases in which a party has not come forward with an application within a prescribed time. Possibly also it might be made compulsory for him to do so in cases where the estate was of a value exceeding a prescribed amount, say a lakh of rupees.

Further possible sanctions.

127. It has been suggested that, in addition to making letters of representation compulsory, all transfers of land or shares and recovery of debts should be prohibited except on production of certificates evidencing the payment of the duty. Even in England such a provision does not find a place in the Statute book. A clause in the Finance Bill of 1894 as presented to the House of Commons, which restrained bankers and others from permitting dealings with the property standing in the names of deceased persons in the absence of a certificate from the fiscal authorities, was withdrawn and has not been introduced since. In France, however, "no transfer of registered securities can be effected without the production of a certificate from the fiscal authorities showing the payment of, or non-liability to, the succession duty; and with a special view to avoiding evasion, so far as bearer securities are concerned, bankers, or other financial agents with whom such securities are generally deposited for the purposes of cashing the interest coupons as they fall due and of watching the drawings, have now been placed under an obligation to give details of all documents of title in their hands forming part of the estate of a deceased client. Authority has also been obtained in the same country to prevent insurance companies from paying over policy moneys to any persons other than the surviving spouse, or lineal issue, except on production of a certificate similar to that required in the case of registered shares. Provisions like these are necessary chiefly for the purpose of ensuring that death duty reaches intangible property. In the present stage of development of this country it seems undesirable to take steps which, though they might operate to the benefit of the revenue, would cause great inconvenience and impede the freedom of commercial transactions.

128. If a compulsory system of representation is adopted in India on the lines described above, the duty can be levied by means of a stamp affixed to the affidavit of valuation leading up to the grant of probate or letters of administration or in the case of joint-family properties on the declaration furnished by the managing member as stated in paragraph 124.

If a compulsory system of representation is not adopted, an alternative method of enforcing the payment of duty would be by the ordinary revenue or income tax process, that is, by insisting on an inventory, by the provision of penalties for evasion, by giving a first charge in favour of the Government in respect of the tax and so on. If this alternative method be adopted, a clear provision should be made throwing the responsibility for furnishing the inventory on a certain person or persons. In France and Holland, the heirs, legatees and beneficiaries of the

The inventory by whom to be furnished.

deceased are all responsible for the payment of the tax and are expected to make the necessary declaration. If necessary, the primary duty of furnishing an inventory may be cast on the persons entitled to apply for probate or letters of administration under the existing law. Clear administrative orders should also be issued making it part of the duty of village officers and other subordinate revenue officers to report to the taxing authorities the deaths of persons possessing property within their jurisdiction.

The department primarily concerned.

129. If this method of collecting death duties be adopted, the question will arise whether the work should be entrusted to the income-tax department or to the revenue department. Either course has its advantages. The mutual help that income-tax and death duties can afford to one another cannot be overestimated, and the returns made in connection with the one can be used to verify those made in connection with the other.

At the same time in this country revenue officers also have facilities for administering the tax. In several provinces the revenue officers maintain registers showing the changes which take place from time to time in the registration of lands for the purpose of collecting land revenue. Further, without the help of village revenue officials, no system of taxation of property can be successfully worked. Under the circumstances, the question which agency should be employed will depend upon whether the tax is to be administered provincially or centrally. If the former, it may be entrusted to the revenue officials; if the latter, to the income-tax department in the first instance, due provision being made for assistance being given by the provincial revenue authorities.

Appeals.

130. Whichever agency is selected for administration and collection of the tax, the following provisions may then be made for appeals:—

(1) Appeals in the form of regular suits in civil courts by the aggrieved party on such matters as—

(a) the binding character of debts;
(b) joint or separate character of property;
(c) claims of *stridhanum*;
(d) validity and alleged *benami* character of alienations;
(e) priority in the order of succession.

On the analogy of regular suits to contest summary orders passed on claim petitions in execution proceedings, a special period of limitation, which might be either three months or six months from the date of the order of the fiscal authorities, might be provided for the purpose of contesting orders on the above points. It might further be provided that the orders of the fiscal authorities on questions such as the above would not have a binding effect except as between the Government and the party taxed. Such a provision would in most cases result in the party paying the tax to the Government and awaiting the most suitable opportunity of contesting his right itself as against the party interested in denying or opposing it.

(2) Appeals from a lower to a higher inheritance tax authority on questions relating to valuation, irregularities in assessment, exemptions from the tax and other matters connected with the internal administration of the Act, with a power of revision to the High Court on points of law. This is analogous to the procedure now prescribed by the Indian Income-tax Act.

(3) If considered necessary, appeals by way of a reference to a court on matters of valuation. A provision might also be made for reference by the court of the question of valuation to referees.

Payment by instalments.

131. Power might be given, as in England, to the authorities administering the tax, to collect the same in annual or half-yearly instalments spread over a series of years.

In England, in respect of real property the period over which the payment can be spread is eight years. In fixing the period within which the instalments should be payable, it would be necessary to consider both the rate of duty and the probable intervals at which deaths will occur and the imposition of a fresh duty will take place.

132. In England, simple interest at the rate of 4 per cent per annum is payable, subject to exceptions, upon all arrears of estate duty, and recoverable in the same manner as if it was part of the duty. A similar provision might be made. In this connection it may be mentioned that, in the Court-fees Amendment Bill now before the Legislative Assembly, there is a provision for interest at 6 per cent per annum on arrears of probate duty.

Interest on arrears.

133. It would also be necessary to enact that any death duty that might be levied in India should be a charge upon the estate on which it was levied and that it should be rateably distributed over the whole estate, so that it might fall on the various heirs and legatees in proportion to the share taken by each. If any one of them paid the whole duty, he would then be able to claim contribution from the rest.

Rateable distribution.

LEGISLATIVE AUTHORITY.

134. The only question that remains is that of the legislative authority which should impose the tax. Under the Scheduled Taxes Rules framed under section 80-A (3) (*a*) of the Government of India Act, taxes on succession or on acquisition by survivorship in a joint family are a form of taxation in respect of which local legislatures can undertake legislation without previous sanction. This power seems to have been given to local legislatures chiefly because it was contemplated that duties of this kind would be collected in stamps, and stamps were classified under the Reforms as a provincial subject. Taking advantage of this provision, several Local Governments have begun legislation on this subject of death duties. Draft Bills have been prepared by the Governments of Madras and Bombay, while in Bengal, Mr. Kinney, the Administrator General, prepared a Bill in 1922 and forwarded it to the Government for consideration.

Legislative authority. The Scheduled Taxes Rules.

135. These Bills illustrate the inconveniences that may arise from provincial legislation on the subject. Reference has already been made to the variations in their provisions regarding valuations of properties and the minimum to be exempted from taxation. The Madras and Bengal Bills refer to property passing not only on succession, but by survivorship, but the Bombay Bill covers the former only. It is doubtful whether the term 'succession' would, unless it was so stated, include acquisition of property by survivorship. The Madras and Bombay Bills make some concession in the rate of duty in favour of certain relations. But the relations chosen and the rates of exemption again vary. The Bengal Bill gives no exemptions whatever on the ground of relationship. The Madras and Bengal Bills leave the existing law of probate and letters of administration practically untouched. The Bombay Bill, on the other hand, makes sections 187 and 190 of the Indian Succession Act applicable to all communities in the province. It is unnecessary to multiply instances of differences. In any system of taxation of inheritances, it is essential to have uniformity within the state in which the tax is levied in the matter of assessment of the tax and to avoid conflict of tax jurisdictions between the various parts of the State. The evils of want of uniformity in the rates levied and in the other incidents of the duty may be illustrated by the extent of double taxation and confusion that exists in America. There the State taxes vary greatly in their rates, their steps of progression and the principles on which they are levied, and a rich man may substantially reduce the inheritance tax payable on his estate by carefully adjusting his residence. On the other hand, it has been pointed out that it is theoretically possible for a particular item of property to be taxed cumulatively by different States to a sum amounting to 130 per cent of its value. In the case of small estates, the very expense of ascertaining the jurisdictions within which the tax is payable sometimes amounts to a large share of the estate. Delays occur in the payment of the tax, and this frequently causes severe market losses owing to inability to sell securities until the tax has been settled in a number of different States.*

The draft Bills prepared by the provinces.

136. To avoid such difficulties, it seems necessary, apart from any question of the division of proceeds between the Central and Local Governments, that any legislation on the subject of succession duties that may be contemplated should be undertaken by the Central Legislature.

Central Legislature essential.

---

* 'An Elusive Panacea' by A. W. Atwood.

ANNEXURE A.

RATES OF DEATH DUTIES IN FORCE IN CERTAIN COUNTRIES—

vide page 209.

UNITED KINGDOM.

Estate duty.—Subject to an exemption of the first £100, this is levied on the whole estate at rates which vary with the size of the estate. The rates of estate duty are :—

Where the net principal value of the estate: Exceeds	And does not exceed	Rate of duty per cent when the death occurred after 31st July 1919.*
£	£	
100	500	†1
500	1,000	2
1,000	5,000	3
5,000	10,000	4
10,000	15,000	5
15,000	20,000	6
20,000	25,000	7
25,000	30,000	8
30,000	40,000	9
40,000	50,000	10
50,000	60,000	11
60,000	70,000	12
70,000	75,000	13
75,000	80,000	13
80,000	90,000	13
90,000	100,000	14
100,000	110,000	14
110,000	130,000	15
130,000	150,000	16
150,000	175,000	17
175,000	200,000	18
200,000	225,000	19
225,000	250,000	20
250,000	300,000	21
300,000	350,000	22
350,000	400,000	23
400,000	450,000	24
450,000	500,000	25
500,000	600,000	26
600,000	750,000	27
750,000	800,000	27
800,000	1,000,000	28
1,000,000	1,250,000	30
1,250,000	1,500,000	32
1,500,000	2,000,000	35
2,000,000	2,500,000	40
2,500,000	3,000,000	40
3,000,000	..	40

* The amount of duty is, where necessary, to be reduced so as not to exceed the highest amount which would be payable at the next lower rate plus the amount by which the value of the estate exceeds the value on which the highest amount of duty would be so payable at the lower rate.

† On small estates where the gross value does not exceed £300 a fixed duty of 30*s*. may be paid inclusive of all other death duties. Similarly on small estates where the gross value exceeds £300, and does not exceed £500, a fixed duty of 50*s*. may be paid inclusive of all other death duties.

Legacy and succession duty.—This duty is levied, in addition to the estate duty, on the property received by individual heirs at rates varying with the degree of relationship. The rates are—

Relationship of the Beneficiary (or the person of nearer consanguinity whom he or she has married) to the Author of the Bounty.	Rate of duty per cent.
Husband or wife, child or lineal descendant of child, father or mother or any lineal ancestor	1
Brother or sister, lineal descendant of brother or sister	5
Any other person, including any related only by natural ties	10
	In certain cases supplementary rates to a maximum of 1½ per cent are chargeable excepting as between spouses.

FRANCE.

Estate duty.—This is levied on the capital value of the whole estate at rates which increase for successive slices. The rates are further graduated, however, according to the size of the family of the deceased, special consideration being given to the case of a family of four children or more. The following are the rates per cent charged in the case of families below this limit :—

—		Three children.	Two children.	One child.	No child.
	FRANCS.				
On the portion exceeding	2,000	·25	·50	1·00	3
On the portion exceeding 2,000 and not exceeding	10,000	·50	1·00	2·00	6
,, 10,000 ,,	50,000	·75	1·50	3·00	9
,, 50,000 ,,	100,000	1·00	2·00	4·00	12
,, 100,000 ,,	250,000	1·25	2·50	5·00	15
,, 250,000 ,,	500,000	1·50	3·50	6·50	18
,, 500,000 ,,	1,000,000	2·25	4·25	8·00	21
,, 1,000,000 ,,	50,000,000	4·40	9·00	18·00	36

Legacy duty.—This duty is also charged on slices of the amounts received by individuals, but is also graduated with reference to an elaborate scale of relationship extending to ten degrees. The following are illustrations of the manner of graduation :—

—		First degree.	Fifth degree.	Tenth degree.
	FRANCS.			
On the portion not exceeding	2,000	1	3	25
On the portion exceeding 2,000 and not exceeding	10,000	2	4	27
,, 10,000 ,,	50,000	3	5	29
,, 500,000 ,,	1,000,000	7	9	40
,, 10,000,000 ,,	50,000,000	15	17	55

HOLLAND.

There are three duties—the succession duty, the donation duty and the mutation duty. The two latter are described on page 207. As in France, special provision is made for the case of families of four or more.

Succession duty.—This is charged in slices on the amount of the individual inheritance, the rates being also graduated by degrees of relationship as follows:—First degree, husband or wife or children; second degree, lineal descendants; third degree, lineal ascendants; fourth degree, children of brothers or sisters; sixth degree, others. The following are instances of the rates per cent:—

		First degree.	Second degree.	Third degree.	Fourth degree.	Fifth degree.	Sixth degree.
	FLORINS.						
On the amount not exceeding ..	*1,000	3·50	5·25	14·50	18	27	38
On the amount exceeding 1,000, but not exceeding	2,000	4·00	6·00	15·00	19	28	39
On the amount exceeding 2,000, but not exceeding	5,000	4·50	6 75	15·50	20	29	40
On the amount exceeding 5,000, but not exceeding	10,000	5·00	7·50	16·00	21	30	41
On the amount exceeding *5,00,000*		*8·00*	*12·00*	*19·00*	27	36	47

* But see paragraph 21. The exemption limit varies with the degree of relationship.

BELGIUM.

There is a mutation duty in respect of immovable property as well as a *succession* duty.

Succession duty.—An exemption is given up to a sum of 2,000 francs when there is a direct heir or a surviving spouse, and a reduction of 2 per cent is made for every child of the heir living at the time of the succession.

The rates are graduated according to slices of sums inherited and degrees of relationship, which are as follows:—First degree, lineal ascendants or descendants; second degree, brothers or sisters; third degree, uncles and aunts, nephews and nieces; fourth degree, great uncles and great aunts, great nephews and great nieces; fifth degree, others.

The following table gives examples of these rates:—

		First degree.	Second degree.	Third degree.	Fourth degree.	Fifth degree.
	FRANCS.					
On the amount not exceeding	5,000	1·40	5·00	6·00	7 00	10
On the amount exceeding 5,000, but not exceeding	10,000	1·60	6·00	7·20	8·40	12
On the amount exceeding 10,000, but not exceeding	20,000	1·80	7·00	8·40	9 80	14
On the amount exceeding 20,000, but not exceeding	50,000	2·00	8·00	9 60	11·20	16
On the amount exceeding 1,000,000, but not exceeding	2,000,000	3·00	13·00	15·60	18·20	26
On the amount exceeding 3,000,000 francs.		5·40	25·00	30 00	35·00	50

JAPAN.

There are two taxes—a succession tax and an inheritance tax. Both are graduated with reference to the degrees of relationship. Apparently the sum involved is the whole estate in the first case and the individual inheritance in the second, but the point is not quite clear.

Succession duty.—The degrees of relationship are: first degree, lineal descendants; second degree, an heir selected by a family conference in the absence of legitimate or presumptive heirs or of parents; third degree, an heir similarly selected by a family conference from among the descendants of a previous family head.

The first 2,000 Yen are exempt. The following are the rates per mille in the case of larger estates for sums in excess of 2,000 Yen:—

				First degree.	Second degree.	Third degree.
			YEN.			
On an estate of a value not exceeding			5,000	5	6	8
On an estate of a value exceeding	5,000	but not exceeding	10.000	6	7	10
,,	10,000	,,	30,000	7	8	12
,,	30,000	,,	50 000	10	12	17
,,	50,000	,,	100,000	14	17	25
,,	100,000	,,	150,000	20	25	35
,,	150,000	,,	200,000	25	30	40
With an additional 5 per mille for every 100,000 over 200,000						

Inheritance tax.—In this case there are three degrees of relationship: the first including direct descendants; the second, husbands or wives or parents; and the third, all others.

The first 1,000 Yen of the inheritance appear to be exempt. Thereafter the duty appears to be levied on the whole amount at the following rates per mille:—

				First degree.	Second degree.	Third degree.
			YEN.			
On an inheritance of a value not exceeding			20,000	12	17	20
On an inheritance of a value exceeding	20,000,	but not exceeding	50,000	20	25	35
,,	50,000	,,	150,000	35	40	50
,,	150,000	,,	200,000	50	55	65
With an additional 5 per mille for every 100,000 over 200,000						

ANNEXURE B.

Statement showing the receipts on account of duty on probates, letters of administration and succession certificates in the various provinces – vide page 215.

Year.*	Madras.	Bombay.	Bengal.	Bihar and Orissa.	Assam.
	RS.	RS.	RS.	RS.	RS.
1900-01	56,877	4,26,003	..	..	5,929
1901-02	87,596	5,50,306	..	..	..
1902-03	97,281	3,22,288	..	..	..
1903-04	94,883	3,58,304	4,20,102	..	..
1904-05	97,251	5,41,586	4,75,942	..	..
1905-06	84,243	3,68,625	4,44,533	..	6,441
1906-07	86,693	4,03,844	4,55,615	..	..
1907-08	89,949	3,74,570	5,61,018	..	72,930
1908-09	99,820	3,60,089	3,49,381	..	77,837
1909-10	87,192	7,85,048	6,32,163	..	1,07,813
1910-11	89,849	4,51 149	3,83,104	..	92,673
1911-12	1,66,325	6 31,790	5,02 809	..	7,725
1912-13	1,32,111	5,82,670	5,03 612	37,330	8,109
1913-14	98 030	5,88,504	5,11,170	27,265	6,067
1914-15	1,42,930	6,06,083	4,85,890	1,14,884	6,603
1915-16	1,14,307	6,00,972	12,97,465	53,593	11 729
1916-17	1,76,283	10 43,772	5,67,803	77,014	10,583
1917-18	1,01,900	6,96 069	8,68,388	75,400	14,040
1918-19	1,31,866	68,882	16,34,737	49,566	10,546
1919-20	1,96,320	14,14,940	14,07,713	31,954	15,540
1920-21	1,93,513	19,75,291	11,97,536	37,395	11,557
1921-22	2,33,062	15 44,734	10,93,222	65,241	15,139
1922-23	2,31,407	12,34,904	15,32,206	37,801	10,015
1923-24	2,35,654	13,84 439	15,32,207	35,652	31,457
1924-25	1,68,411	..	..	70,465	37,760

* The figures for Bengal up to 1921-22 are for calendar years.

Year.	Punjab.	United Provinces.	Central Provinces and Berar.	Burma.
	RS.	RS.	RS.	RS.
1900-01	44,624	..	6,452	‡ 4,716
1901-02	35,090	..	5,729	‡ 1,886
1902-03	21,398	† 63 786	1,988	‡ 5,546
1903-04	Not available.	† 50,179	4,451	‡ 8,723
1904-05	46,619	† 40,262	8,072	‡ 56,850
1905-06	22,461	† 66,801	10 999	‡ 2,559
1906-07	39,199	† 65,938	6,648	‡ 9,112
1907-08	34 670	† 81,881	5 838	‡ 5,300
1908-09	25 976	† 91,976	11,601	‡ 3,431
1909-10	36,504	† 1,07,172	6,597	87,395
1910-11	31,602	† 84,174	8,657	1,56,106
1911-12	42,699	† 76,742	13,967	1,21 415
1912-13	1,11,355	† 1,21 797	15,015	71,141
1913-14	Not available	† 1,23,331	6,716	1,17,180
1914-15	36,000	† 64 876	8,671	1,26,497
1915-16	44 8 1	† 1,09 824	14,980	79 123
1916-17	94,697	1,31,422	20,217	‡ 4,983
1917-18	1,00,119	1,08,988	15,799	1 32,513
1918-19	39,467	1,17,994	20 815	1 13,111
1919-20	Not available.	1,77,660	42,767	2,53 039
1920-21	Do.	1,85,277	20 334	2,37,012
1921-22	Do.	4,37,294	74 484	1,38,712
1922-23	52,821	1,69,377	48,056	1,61,431
1923-24	26,559	1,72,324	19,170	1,83,804
1924-25	34,975	..	..	1,62,876

† The receipts for Oudh are not included in these figures.
‡ Relates to Upper Burma alone. Figures for Lower Burma are not available.

ANNEXURE C (vide page 225)

I.—Statement showing the growth of investments in Government paper.

	RS.		RS.
1883-84	93,19,13,840	1904-05	1,22,29,78,235
1884-85	93,18,65,600	1905-06	1,26,08,10,618
1885-86	92,70,89,820	1906-07	1,30,45,50,655
1886-87	92,65,36,360	1907-08	1,32,82 94,955
1887-88	92,08,98,620	1908-09	1,34 56,60,505
1888-89	1,00,87,97,420	1909-10	1,36,84,83 105
1889-90	1,02,76,11,750	1910-11	1,38,09,72,155
1890-91	1,02,74,65,550	1911-12	1,39,96,36,205
1891-92	1,02,69,23,170	1912-13	1,42,83,64,790
1892-93	1,02,98,75,520	1913-14	1,45,68,55 790
1893-94	1,05,54,60,780	1914-15	1,50,52,65,200
1894-95	1,04,37,87,400	1915-16	1,55,45,97,700
1895-96	1,03,78,89,280	1916-17	1,62,86 03 073
1896-97	1,09,11,50,530	1917-18	1,70 07,88,793
1897-98	1,11,69,56,340	1918-19	1,99,06,53,494
1898-99	1,12,65,43,980	1919-20	2,19,44,60,981
1899-1900	1,12,47,47,010	1920-21	2,57,13,68,841
1900-01	1,15,33,19,058	1921-22	3,04,32,19,208
1901-02	1,16,19,13,833	1922-23	3,39,15,78,107
1902-03	1,17,55,40,660	1923-24	3,58,20,41,646
1903-04	1,19,42,43,035		

II.—Statement showing deposits in Post Office Savings Banks.

Year.	Amount held by Europeans.	Amount held by Indians.	Total.
	RS.	RS.	RS.
1882-83 to 1886-87 (quinquennial average).	95,47,000	3,53,30,000	4,33,77,000
1887-88 to 1891-92 ,,	1,18,71,000	5,93,61,000	7,12,32,000
1892-93 to 1896-97 ,,	1,29,59,000	8,16,64,000	9,46,23,000
1897-98	1,06,30,000	8,22,43,000	9,28,73,000
1898-99	1,04,17,000	8,38,63,000	9,42,80,000
1899-1900	1,05,85,000	8,58,79,000	9,64,64,000
1900-01	1,11,23,000	8,93,10,000	10,04,33,000
1901-02	1,14,15,000	9,54,06,000	10,68,21,000
1902-03	1,11,56,000	10,30,59,000	11,42,15,000
1903-04	1,13,88,000	11,19,49,000	12,33,37,000
1904-05	1,18,83,000	12,21,87,000	13,40,70 000
1905-06	1,17,90,000	12,81,36,000	13,99,26,000
1906-07	1,24,30,000	13,52,40,000	14,76,70,000
1907-08	1,24 36,000	13,93,78,000	15,18,14,000
1908-09	1,22,50,000	14,00,92,000	15,23,42,000
1909-10	1,26,78,000	14,59,94,000	15,86,72,000
1910-11	1,41,81,000	15,50,67,000	16,91,88,000
1911-12	1,49,54,000	17,40,31,000	18,89,85,000
1912-13	(a)	(a)	20,61,14,000
1913-14	(a)	(a)	23,16,75,000
1914-15	(a)	(a)	14,89,26,000
1915-16	(a)	(a)	15,32,12,000
1916-17	(a)	(a)	16,59,53,000
1917-18	(a)	(a)	16,58,46,000
1918-19	(a)	(a)	18,82,45,000
1919-20	(a)	(a)	21,34,85,000
1920-21	(a)	(a)	22,86,22,000
1921-22	(a)	(a)	22,26,25,000
1922-23	(a)	(a)	23,19,98,761
1923-24	(a)	(a)	24,78,83,170

(a) From 1912-13 the distinction between European and Indian deposits has been discontinued.

III.—Statement showing the paid-up capital in Joint Stock Companies.

	Rs.		Rs.
1904-05	40,17,40,650	1914-15	80,24,18,904
1905-06	41,62,97,400	1915-16	84,56,65,082
1906-07	44,05,19,730	1916-17	90,42,18,252
1907-08	50,40,18,630	1917-18	98,60,54,067
1908-09	56,71,96,575	1918-19	1,06,08,75,860
1909-10	61,18,41,510	1919-20	1,19,46,35,835
1910-11	63,71,11,785	1920-21	1,58,31,03,795
1911-12	69,03,57,473	1921-22	2,22,83,96,939
1912-13	71,69,40,685	1922-23	2,49,85,40,450
1913-14	76,04,83,253	1923-24	2,54,56,69,603

IV.—Statement showing the paid-up capital in Life Assurance Companies in British India.

	Rs.		Rs.
1903	16,50,637	1921	51,38,461
1908	22,72,853	1922	52,72,340
1913	50,67,704	1923	53,47,115
1918	43,43,279		

V.—New business transacted by Life Assurance Companies in each of the years 1919 to 1923.

Year.	Number of new policies.	Sum assured.
		Rs.
1919	Information not available.	4,49,06,170
1920	Do.	5,16,90,623
1921	32,417	5,46,81,489
1922	33,956	5,64,10,279
1923	35,752	5,84,93,533

Total sum assured up to the end of each of the years 1921 to 1923.

Year.	Rs.
1921	38,71,31,525
1922	42,85,64,289
1923	51,83,78,748

ANNEXURE D.

Fees in respect of probates, letters of administration and succession certificates proposed by the Select Committee on the Court-fees (Amendment) Bill—vide page 223.

Number.	——	Proper fee.
1. Probate of a will or letters of administration with or without will annexed.	When the amount or value of the estate in respect of which the grant of probate or letters is made exceeds two thousand rupees, on such amount or value, up to ten thousand rupees.	One per centum.
	When such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees, up to thirty thousand rupees.	Two per centum.
	When such amount or value exceeds thirty thousand rupees, on the portion of such amount or value which is in excess of thirty thousand rupees, up to sixty thousand rupees.	Three per centum.
	When such amount or value exceeds sixty thousand rupees, on the portion of such amount or value which is in excess of sixty thousand rupees, up to a lakh of rupees.	Four per centum.
	When such amount or value exceeds a lakh of rupees, on the portion of such amount or value which is in excess of a lakh of rupees, up to twenty lakhs of rupees.	Five per centum.
	When such amount or value exceeds twenty lakhs of rupees, on the portion of such amount or value which is in excess of twenty lakhs of rupees.	Six per centum.
2. Certificate under the Succession Certificate Act, 1889.	On the amount or value of any debt or security specified in the certificate under section 8 of the Act, up to ten thousand rupees.	One per centum.
	When such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees, up to fifty thousand rupees.	Two per centum.
	When such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees, up to a lakh of rupees.	Three per centum.
	When such amount or value exceeds a lakh of rupees, on the portion of such amount or value which is in excess of a lakh of rupees.	Four per centum.
3. Certificate under Bombay Regulation VIII of 1827.	....	Subject to the provisions of paragraph viii of section 19, the fee chargeable in the case of a succession certificate (article 2) on the amount or value of the property in respect of which the certificate is granted.

APPENDIX XIII

Chapter XIII—Local Taxation.

A Note on taxes on consumption for local purposes.

INTRODUCTORY.

(Vide paragraph 406 on page 296 of Volume 1.)

Four principal groups of consumption taxes. Taxes on consumption cover a very wide category, in which four principal groups may be distinguished as follows:—

(1) Taxes levied on crossing a frontier, of which customs duties are the chief;

(2) Duties levied on specific articles on issue from places of manufacture or bonding;

(3) State monopolies; and

(4) Duties levied generally or on wide categories of articles by taking a percentage of the sale proceeds.

Duties levied on crossing a frontier Customs duties. The questions relating to duties of Customs levied on entering a country constitute a whole branch of Economics in themselves. It is sufficient to note here that the policy adopted in respect of making customs duties protective or in choosing between a general revenue tariff at a comparatively low rate and a tariff imposed at a higher rate on a few specified articles may have important reactions in the matter of the consumption taxes levied in the interior of the country.

Transit dues. Duties levied on internal frontiers may arise when a State is broken up into smaller States, or may be levied as internal transit dues or as tolls and terminal taxes. In all cases they are to be deprecated as obstructions to trade. In the first case zollvereins have been formed to abolish them and federal constitutions contain clauses prohibiting them. A striking illustration of the evils of the second is to be found in the history of the Indian Inland Customs line, long since abolished. Tolls and terminal taxes have been to a great extent abolished in Europe, but still persist in parts of India.

Octroi duties. Duties levied on entry into the limits of towns are commonly known as octroi duties, and it is proposed to deal with them in detail below.

Excises. Duties of excise, in the narrow acceptance of the term, are dealt with elsewhere and form generally the corollary of duties of customs on the same articles. They are normally limited to very small categories of goods.

Monopolies. State monopolies are also limited to small categories of goods such as salt, spirits, tobacco and matches, and form in effect an alternative method of collection of an excise; but add to this element of taxation that of State trading, together with limitation of private enterprise and of the choice of the consumer in respect of the goods consumed.

Taxes on sales. Duties on sales are of very ancient origin, and since the War have enjoyed an extensive revival. They may be grouped into three categories—(a) taxes on turnover, which are cumulative, involving as they do the repeated taxation of the same article at each stage from its extraction as raw material to the point at which it reaches the consumer; (b) taxes on wholesale sales levied once when the goods leave the hands of the manufacturer or wholesale dealer; and (c) taxes on retail sales levied on the sale to the final consumer. These taxes may be either general or applied only to particular classes of articles.

The present note is concerned with the octroi and terminal taxes and with the taxation of sales as an alternative. It is the purpose of this note to examine the question of consumption taxes as applied or proposed to be applied, for local purposes, and this involves an examination first of the existing consumption taxes in the shape of the octroi and terminal taxes, and second, of the possible substitutes for the same afforded by the plan of taxation of sales.

THE OCTROI AND TERMINAL TAX.

The octroi in Europe. The octroi has been familiar in many of the countries on the continent of Europe since the days of the Roman Empire. The tax was originally levied by Roman towns on wines and certain articles of food imported or exported. It was introduced by the Romans in Gaul and continued there after the invasion of the Francs under the names of *Tonlieux* and *Coutumes*. The privilege of levying this tax was granted to the French towns by the King, but occasionally the Government claimed a percentage of the proceeds. The tax has, however, been abolished in many of the countries on the continent, as it was an impediment to industry and commerce and raised the prices of common commodities and necessaries of life. Belgium, Holland, Denmark, Sweden and Norway are among the countries which have replaced the octroi by other taxes.

In France the tax was abolished during the Revolution, but as there were no alternative sources of income for the municipalities, it was re-imposed in Paris in 1798. These duties are even now a very important source of revenue in France, varying from one-third to one-half the total receipts of the *communes*. In towns with less than 4,000 inhabitants the necessaries of life are usually free. The cost of collection was before the war about 10 per cent of the gross revenue, but it is understood that the percentage has largely increased since. The towns usually recover the dues themselves, or in a more antiquated fashion farm them to contractors, but latterly a system under which the Central Government collects the duties on their behalf through an establishment directly under its control has become increasingly common. The duties have been exceedingly unpopular in France and their abolition has been suggested more than once, but in spite of their obvious inconvenience, of the high cost of collection and their heavy incidence on the poorer classes, very little progress has been made towards their abolition, mainly owing to the difficulty of discovering acceptable substitutes. The French system, however, is free from one of the gravest objections to the octroi, since there is provision for very prompt refunds of the duty in the case of articles which are re-exported.

In Germany octroi duties are now a comparatively unimportant source of revenue. They were abolished in Prussia in 1820, though Berlin maintained them till 1874. Under the customs tariff law of 1902 octroi dues on corn, vegetables, flour and other mill products, cattle, meat, meat-products and fat were abolished with effect from April 1910. The loss consequent on the abolition of these dues has been met in a variety of ways, such as—

(1) by increasing dues on other articles, especially the charges on slaughter-houses, building materials, furniture, etc., and by adding to the list of dutiable articles,

(2) by increasing the income-tax, and

(3) by the introduction of the amusements tax.

The Italian octroi duties date from the year 1864. The duties levied were of a threefold nature—

(1) a tax levied by the State on special articles of food and drink;

(2) a tax levied by *communes* on all other articles; and

(3) a surtax for communal purposes on the State octroi.

The State charged different rates according to the size of the *communes*. In closed *communes* the octroi was levied at the gates and in open *communes* on sales at the markets.

The system has, however, been changed by a decree of September 1923 under which the sole right of levying octroi has been given to the *communes* in exchange for all Government subsidies. The articles that may be taxed and the maximum rates have been laid down by the Central Government. The general effect of this change has been to impose heavy duties on wines and spirits and to exempt grain and the raw materials of industry.

History of the tax in India—The transit duties.

Octroi duties in the shape of town and market dues were in existence under the ancient Hindu rulers, although they were assessed and collected on a different system from that now in vogue. References to such taxes are found in Manu, Megasthenes and the Aini-i-Akbari. They were also collected regularly under the Moguls by the Kotwals. In the 18th century the transit of goods by road and river was subject to inland duties, and the East India Company enjoyed a very important concession in the exemption of its trade from those duties, so much so that the order of Mir Kasim, Nawab of Bengal, in 1763, remitting all transit dues, and thus depriving the company and their servants of the advantage, was treated as a declaration of war. The duties were restored when Mir Jafar was again installed and as time went on and the efficiency of their administration increased were found to be increasingly oppressive.

Their evil effects.

Their evil effects are described in a memorandum by Holt Mackenzie published in 1825. He said: "Some articles have to run the gauntlet through ten custom-houses, passing at each several subordinate chowkis, before they reach the Presidency, and little or none of the great staple commodities of the country escape from being subjected to repeated detentions.

"Even supposing that there were no exactions and no delay, still the system would seriously hinder the commercial intercourse of the country, since no interchange of goods can take place between districts separated by a line of chowkis, unless the difference of price shall cover not only the expense of transportation and the other charges of merchandise, but also the duty of 5 to 7½ per cent levied by Government. Thus also the natural inequalities of prices are aggravated; and, contrary to every principle, justly, applicable to a consumption tax, the burden falls on those places where the consumer would, independently of duty, have most to pay.

"But when to the Government demand are added those of the custom-house officers, it appears to be certain that much trade that would be carried on by persons of small capital must be absolutely prevented. The rich merchant can afford to pay the utmost demand likely to be made upon him, because a considerable douceur will not fall heavy on a large investment, and because his rank and wealth secures him from any outrageous extortion. But to the petty trader a moderate fee would consume the probable profit of his adventure, and he has little or no security for moderation . . . . ."

It was estimated that in 1825 the inland transit duties for Bengal alone brought in about 33 lakhs of rupees. The Company was not prepared to sacrifice this revenue and no action was consequently taken on Holt Mackenzie's report.

In 1828 Lord William Bentinck employed Sir Charles Trevelyan to make an enquiry into the transit duties. The resulting report showed that the evils of the transit duties had been considerably aggravated under British rule and that inland trade and manufactures were stifled by the system. In 1835 Lord Ellenborough commented very severely on the serious evils of the system. He wrote to the East India Company:

"No less than 235 separate articles are subjected to inland duties. The tariff includes almost everything of personal or domestic use, and its operation, combined with the system of search, is of the most vexatious and offensive character, without materially benefiting the revenue. The power of search, if really exercised by every custom-house officer, would put a stop to internal trade by the delay it would necessarily occasion. It is not exercised except for the purpose of extortion.

"The effect upon the national morals is yet more serious than the effect upon national wealth. Every merchant, every manufacturer, and every traveller is, as it were, compelled, for the security of his property or the protection of his personal comfort, and not infrequently for that of the feelings of the females of his family, to enter into unlawful collusion with the officers of Government. It is a system which demoralises our own people, and which appears to excite the aversion of all the foreign traders of Asia."

The abolition.

The East India Company was still reluctant to take any action, but the publication of Sir Charles Trevelyan's report and the action of some of its own servants in India forced its hands. Sir Charles Metcalfe abolished the inland customs dues in Bengal in 1835 and soon after the town duties, which had developed as part of the system. In 1842 Lord Ellenborough abolished them in Sind and Madras. Meanwhile Mr. Ross in the Upper Provinces had abolished them on his own initiative.

—and reimposition as town duties.

The dues so far levied had been in the main collected for general State purposes. But already in 1823 the Government had commenced the practice of appropriating the dues to meet the expenditure of towns, and when in the early sixties the duties were reimposed in many places in the north of India they appeared, not as items of general revenue, but as the mainstay of the revenue of the towns.

The principles governing the levy of these taxes—Strict limitations in the earlier stages.

These town duties have continued ever since and have formed the subject of numerous and various declarations of policies. The first of these was contained in Regulation VI of 1805, which limited taxation of commodities to those imported for consumption or use within the town. Previous to this the town duties had been of the nature of a terminal tax, i.e., a final charge on all goods entering a municipal area, whether for consumption therein or for export, and there has always been a tendency on the part of local authorities to revert to that attitude, but the Government of India declared against this as early as 1805 and have consistently attempted to maintain that policy since.

The next important enunciation of the principles on which octroi should be levied was that drawn up in 1864 by Sir Charles Trevelyan. The following extract from a resolution issued in that year indicates the attitude of the Government of India at that time.

"Town duties are very effective for raising money. They existed under the Native regime, under the name of *choongee*, or handful, implying that everything that passed had to pay a small contribution, and in some parts of India they are more popular than direct taxes of any kind. If they could be confined to things consumed in the town without interfering with the trade, they could be only open to the objection that they fall in undue proportion upon the poor. But after a full trial of this tax in Bengal and the North Western Provinces, it was abolished in 1835, as being alike injurious to the general trade and to the towns immediately affected. Town duties have been lately re-established as a municipal tax in many places in the North Western Provinces, Oudh and the Punjab, and the old vice of interference with the general trade immediately reappeared, with the additional aggravation that this time the public at large were mulcted for the advantage of local interests.

"The unchecked multiplication of these local exactions would soon reproduce the worst evils of the old transit and town duties.

"The town duties which were abolished in 1835 were levied only upon eight articles of local consumption, but there appears to be no limit to the number of articles upon which they are exacted since they have been revived as a municipal tax. There are 197 articles, many of which branch out into numerous sub-divisions, upon which town duties are levied in Setapore in Oudh. At Broach they amount to 182 under the head of 'Articles imported for consumption', five under 'Raw material imported to be manufactured' and 51 under 'Articles exported', or 238 in all, without including sub-divisions. This multiplication of petty exactions is open to great objection. The tax ought to be confined to a few articles of local consumption, such as ghee, firewood, fruit, vegetables, fowls, eggs, and animals for slaughter, which do not enter into the general trade of the country, and which being recognizable at first sight, do not involve the stoppage and search of other commodities."

These principles were again enunciated in 1868 and accompanied by specific orders as to the articles on which octroi could be levied. The imposition of an octroi duty was prohibited on salt, opium, fermented or spirituous liquors and articles liable to customs duty and imported by sea into India. The levy was permitted in the case of the following articles:—

(1) Articles of food or drink.
(2) Animals for slaughter.
(3) Articles for fuel, for lighting or for washing.

(4) Articles used in the construction of buildings.
(5) Drugs, gums, spices and perfumes.
(6) Tobacco.

To this list were subsequently added piece-goods and other textile fabrics and metals and articles of metal.

The Government further ordered—

(1) that on the exportation from a town of dutiable goods the octroi levied on them should be refunded;
(2) that municipalities should provide bonded warehouses or other appliances for the storage of goods in transit, for the use of which reasonable fees might be levied;
(3) that tolls on entering municipal limits should not be levied except for the use of any bridge, quay, wharf, lock or other work constructed or maintained at the cost of the municipality; and
(4) that goods, the property of Government, should be exempt from municipal taxation.

The next important declaration was made in 1899, when the Government of India, finding that many abuses had arisen, found it necessary to intervene again. They pointed out to the Local Governments that—

(1) the articles taxed should be main staples of local consumption and should be as few as possible; and
(2) the utmost facility should be given by way of arrangements either for passing articles through town limits under bond or for facile refund on exit of duties levied on entrance.

A change of policy begins in 1903.

In 1903, for the first time, this policy was radically altered. It was then found as the result of enquiries, that there was a consensus of authoritative opinion that indirect taxation was strongly preferred to direct by the population of Northern and Western India and that the effect of the restrictions imposed by the Government of India, coupled with the increasing demands of the administration had been to compel municipalities either to enhance their rates of octroi on the necessaries of life or to resort to the unpopular expedient of a house-tax. In deference to these views the Government of India modified their earlier policy and issued the following instructions for the information and guidance of municipalities:—

(1) The articles taxed should be as a rule the main staples of consumption and should in any case be as few as possible;
(2) Articles which were mainly products of the country might be taxed more highly than those which were not;
(3) The necessaries of life should in all cases be taxed moderately;
(4) Luxuries might be taxed more heavily than necessaries, but a high octroi should not be imposed on tobacco, which was almost the only luxury of the poorer classes.

The United Provinces Committee of 1908.

In 1908 a committee appointed to inquire into the question of municipal taxation in the United Provinces examined the whole question of octroi in great detail. They found innumerable abuses and condemned the system of octroi duties in very severe terms. The main recommendations of the Committee regarding this tax were—

(1) Abolition of octroi in those towns in which it could be replaced by direct taxation, for instance, by the imposition of a tax on circumstances and property;
(2) The substitution for it elsewhere of a terminal tax on the lines indicated below:—
(a) The tax should be imposed on all imports at rates lower than the existing octroi rates.
(b) There should be no refunds.
(c) There should be no *ad valorem* assessment. The tax should be on the maundage passed and the rates applied equally to all goods.
(d) It should be collected by the railways.
(e) Passengers' luggage and parcels under 20 seers should be free.
(f) Goods imported and rebooked without breaking bulk should not be charged.

(g) A corresponding impost on goods imported by road should be levied in the shape of a toll, fixed with reference to the maundage rates on rail-borne goods.
(h) The anomaly that uniform maundage rate would cause the tax to fall most lightly on the most valuable classes of commodities, should ordinarily be rectified by a direct tax on traders in those classes of goods, preferably in the form of a license tax.
(i) Uniform rates in every municipality were undesirable, and rates should be fixed to suit circumstances.
(j) No attempt should ordinarily be made to meet the whole requirements of the municipality from such a tax.

The Government of India, after consulting the Local Governments of Provinces in which octroi duties were in existence yielded to the volume of practical experience and the unanimity of Indian opinion against the system of octroi taxation and agreed to the imposition of a terminal tax as being one which was on the whole less likely to be burdensome on through trade than octroi with a problematical refund. They sanctioned as an experimental measure the substitution in the United Provinces of direct taxation for octroi in the smaller towns, and the application to a large number of other towns in which conditions were suitable of the system of a terminal tax, or light transit due on imports or exports, subject to no refunds.

The next stage is marked by the issue of a resolution in April 1915, in which the Government of India laid down the restrictions subject to which a terminal tax should be levied. These were as follows:—

(1) The terminal tax, wherever imposed, should be substantially lower in its rates than the octroi which it replaces,
(2) It should be limited to places where there were special grounds for applying it, which must be adequately demonstrated,
(3) It should be regarded as facilitating the transition to a system in which direct taxation would form an increasingly important factor, not as an elastic means of progressively increasing the resources of municipalities apart from normal developments due to increase of traffic, and
(4) It should not be adjusted with the primary object of compensating municipalities for the loss of octroi.

Further change of policy in 1917.

These orders failed to a great extent of their purpose and in the year 1917 the Government of India made a further advance towards the position which the municipal administrations were anxious to secure. This is illustrated by the memorandum of principles governing the imposition and collection of the terminal tax which was issued for the guidance of Local Governments on 6th July 1917. The more important of these principles were—

(1) That in municipalities where octroi had not been previously levied the previous sanction of the Government of India must be obtained to the imposition of a terminal tax.
(2) That the tax should not necessarily be looked upon as a step towards an increasing degree of direct taxation, but might be introduced merely in order to replace octroi, provided that the receipts from the terminal tax did not materially exceed those from the octroi which it superseded.
(3) That the tax should ordinarily be imposed on imports only, but there was no objection to the taxation of exports as well as imports in places where municipalities were large centres of export trade.
(4) That the taxation of salt, opium and excisable articles, including materials used in manufactures and mineral oil, should always be kept at low figures.

(5) That refunds in the usual sense of the term would not be allowed.

(6) That the description of the articles to be taxed should as far as possible be adapted to the railway classification of goods.

These rules were intended to provide the necessary safeguards to secure that the tax was kept light, that it was worked as simply as possible, and that the convenience of the railways, through whose agency it was to be collected, was always consulted.

The Scheduled Taxes Rules.

The position so established was radically altered by the introduction of the Reforms. Under the Scheduled Taxes Rules issued in 1920 Provincial Legislative Councils were authorised to pass without the previous sanction of the Governor-General a law imposing or allowing a local authority to impose an octroi or a 'terminal tax on goods imported into a local area in which an octroi was levied on or before the 6th July 1917'. This rule created an anomalous position, for while Local Governments had the unlimited right to vary the rate of terminal tax where there had been octroi on or before the 6th July 1917 it was held that they had no right to increase a terminal tax where it had since that date been imposed with the previous sanction of the Government of India. To remove this anomaly item 8 of Schedule II to the Scheduled Taxes Rules was amended to read—

"The terminal tax on goods imported into or exported from a local area, save where such tax is imposed in a local area in which an octroi was not levied on or before the 6th July 1917."

The result of this amendment is that a reference to the Government of India is now necessary only when terminal taxation is to be imposed for the first time in an area in which an octroi was not levied on or before the 6th July 1917, but once a terminal tax has been sanctioned, or in towns where the terminal tax has been substituted for the octroi by the Local Governments, the sanction of the Government of India is not required to the revision of the rates and Local Governments are free to raise them to any figure they may consider necessary. In the case of the Central Provinces even this restriction does not apply, since with the previous approval of the Government of India a clause was inserted in 1921 in the Central Provinces Municipalities Act empowering municipalities to levy a terminal tax without reference to that Government.

The present position—Control by the Government of India.

The present position may be summarised as follows:—The previous sanction of the Government of India is not required under the Scheduled Taxes Rules for the introduction of the octroi in any municipality, but their previous approval is necessary whenever it is proposed to substitute the terminal tax for the octroi. In practice, however, having relaxed their control in the case of one province, it would be difficult for the Government of India to refuse their sanction in any individual case. The amendment of the rules in 1923 has further deprived the Government of India of the limited control they had over the rates of terminal tax. Thus, by a series of steps, they have practically abdicated their whole control as regards the levy of the octroi and the terminal tax.

The history of the octroi duties in India and their subsequent development into the terminal tax narrated at some length above illustrate the difficulty in which a Central Government is placed when it attempts to control the detailed levy of taxes by local authorities. Although before the introduction of the Reforms the Government of India were in a position effectively to control local administrations and very often actually did so, the instructions of the Government of India and the principles laid down by them for the guidance of Provincial Governments and local authorities as regards the levy of the octroi and the terminal tax were repeatedly ignored, and the Government of India in a series of resolutions which purport to reiterate their policy have by successive stages practically given up such measure of control as they were once exercising.

Control by the Local Governments—The United Provinces.

While thus with the introduction of the Reforms, control by the Government of India has practically come to an end, it would seem that in some provinces very little effective control is exercised by local Governments over the activities of municipal boards. For instance, Mr. Muir, the Secretary of the Local Self-Government Department describes the procedure observed in sanctioning schedules in the United Provinces as follows:—

"Proposals for fixing the rates of both taxes (i.e., the terminal tax and the octroi) and for the inclusion or exclusion of the various classes of goods emanate from the boards concerned. If the tax is to be imposed for the first item, some one prepares a list of the articles the taxation of which seems worth while. Some use may be made of railway statistics, particularly in the case of the terminal tax. Commonly the schedule of another town is adopted. The selection ultimately made is probably not unsuitable, but this, as also the rates proposed, is mainly a matter of guess work. If it is a case of revising a schedule, attention is usually confined to the rates or to the inclusion of articles hitherto untaxed. The exclusion of an article already taxed is seldom proposed. When the proposals are published locally, some section of the trading community may succeed in obtaining the exclusion of or a reduction upon some article in which it is interested, but a study of the taxable capacity past or future of the various sections of the trade is never seriously attempted. The proposals then reach the Secretariat or the Commissioner (the latter being the final sanctioning authority in the case of octroi in all but a few of the larger towns). How Commissioners proceed I cannot say, but in the Secretariat the schedules are compared with those in force in other towns. Rates which approximate to rates in force elsewhere are usually accepted. No other method of examination is possible. If it were, there would be no time for it. Even the examination by comparison takes much more time than can be easily spared."

If these statements may be taken as generally applicable to the attitude of Local Governments, the position is undoubtedly grave. The evidence of the Financial Commissioner for Railways shows that the practice of levying the terminal tax is rapidly growing. A wide range of commodities has been subjected to this impost and the rates fixed in some instances are very high. The case of the Nagina Municipality, though perhaps it is an extreme one, may be cited as an instance of the grave abuses to which the imposition of this tax is subject in the absence of any effective control by a central authority. The main features of the tax as proposed by the Nagina Municipality are as follows:—

(1) The tax is not intended to be a substitute for octroi, but is to be levied in lieu of direct taxation, the main object being to transfer a large share of the municipal taxation on to the people of the surrounding districts who get their supplies through Nagina.

(2) The rates proposed are extremely high, for example—
Rs. 2 per maund of cotton piece-goods;
Rs. 2/3 per maund of woollen and silk cloth;
Rs. 1/3 per maund of leather shoes.

(3) A tax of 8 annas per maund, which is equivalent to Rs. 14 per ton, is to be levied on 'iron of superior quality'. This term has not been precisely defined, but presumably includes steel which is understood to be the raw material of an important local industry. The duty amounts to the full import duty in force before the Steel Industry Protection Act was passed and even at present it represents over 50 per cent of the value of the article landed at a port.

(4) A heavy duty is to be levied on articles of luxury.

(5) A differentiation is to be made between foreign goods and Indian-made goods.

It would be difficult to cite any single principle laid down by the Government which has not been contravened by these proposals. Yet the Local Government have approved them, and even the Agent to the Railway has agreed to collect the tax, although the classification does not correspond with the goods classification in force on the railway, so that it is difficult to understand how it is to be collected.

Bombay.

The recent developments in the western provinces have not been less disquieting. As has been pointed out already, any municipality in the Central Provinces can now levy a terminal tax without a provision for refunds on any article and vary the rates as it pleases without the previous sanction of the Government of India. In Bombay there is provision in the District Municipalities Act for the levy of octroi and the tax is levied in a large number of municipalities. The Bombay City Corporation also levies town duties on grain, flour, wines and spirits, sugar, ghee, beer, timber, firewood and other articles which yielded in 1922-23 Rs. 17 lakhs. In addition to these town duties, the Government of Bombay, with the approval of the Government of India, introduced in 1920 a duty on cotton imported into the City of Bombay by land or sea. This duty is levied under an amendment to the City Municipality Act and is intended mainly to finance the Bombay development scheme. The rate of tax is now Re. 1 per bale weighing approximately 3½ cwts. Raw cotton intended for immediate export is not exempted from the tax, nor is the duty refundable on export. Of the proceeds of the duty three-sevenths are allotted to the Bombay City Municipality and four-sevenths to the Government. Out of the Government share, Rs. 4 lakhs are allotted to the Development Trust and the balance, which amounted to 17½ lakhs in 1923-24, is utilised to make up the difference between the economic rent and the actual rent of tenements built for labourers. It may be pointed out here that Bombay is the main port for the export of raw cotton, which represents well over 50 per cent of the exports of the port. So far as the cotton that is exported from Bombay is concerned therefore, the duty operates as an export duty and is open to all the objections to such taxes. A non-refundable terminal tax has also been in existence at Karachi, the other important port of the province, since March 1914.

The latest developments.

Some further developments that have recently taken place in the Bombay Presidency may here be noted. Export duties on raw cotton have been introduced in four municipalities (Dhulia, Faizpur, Chopda and Yawal), and proposals have also been made in some cases for the levy of a duty on cotton converted into cloth, which is of the nature of an excise duty on cotton cloth. In 1924 the Government of Bombay also sent up proposals to the Government of India for the withdrawal of the powers of the Governor-General in Council in respect of the levy of terminal taxes within local board areas in the Bombay Presidency. Apparently what was contemplated was the levy of an undisguised transit duty at places other than large towns.

No less serious are the proposals made by the Bombay Excise Committee and the Corporation of Bombay. The Excise Committee, while fully recognising the retrograde nature of transit duties, have recommended the following taxes to make up the loss of excise revenue on the introduction of total prohibition:—

(1) A universal passenger tax collected by means of a surcharge on tickets, which is sought to be justified on the ground that the passengers entering the city derive benefits from the amenities provided by the municipality.

(2) A terminal tax which would produce in Bombay City 30 lakhs and in other urban areas at least 20 lakhs.

The Bombay City Municipality has also recently approved a proposal to levy a non-refundable terminal tax in lieu of the existing town duty. The proposed tax would be in the form of an additional duty on all imports by sea, rail and road. This proposal has been strongly opposed both by the Burma Chamber of Commerce and by the Bombay Port Trust, whose objections are summarised below:—

(1) The tax would have a restrictive effect on trade,

(2) It would place Bombay at a disadvantage as compared with competing ports where such taxation was not in force and would thereby tend to divert trade both sea borne and rail borne to cheaper or more favoured places.

(3) It would drive away transhipment and re-export trade, the volume of which in Bombay is considerable.

(4) It would cause all-round increases of prices, probably beyond the amount of the duty itself, and would affect up-country consumers and producers, who would receive no corresponding benefits.

(5) It would tap the main source of income to which the port must look to meet its expenses and to enable it to carry out necessary improvements and developments.

(6) It would nullify the efforts of the port authorities to reduce charges on trade by retrenching expenditure.

(7) It would involve the collection of similar taxes on trade by two independent public bodies.

(8) It would establish a principle which, once accepted, might legitimately be extended to municipalities and other local bodies all over India, which would be manifestly undesirable and harmful to the trade of the country.

The proposals are now under the consideration of the Bombay Government.

It is obvious from the preceding paragraph that the terminal tax is rapidly developing into a transit duty, which will be a very serious impediment to trade and commerce.

A more general account of the existing arrangements.

Before discussing the possible remedies for this state of affairs, it is desirable to describe in some detail the methods by which these taxes are assessed and collected.

The octroi is now levied in the Punjab, the United Provinces, the Central Provinces and Bombay and on one or two articles in certain large towns outside these provinces. The following statement shows the number of towns levying the octroi, the total revenue from this source, and the ratio of this revenue to the total revenue derived from taxation. It will be observed that, especially in the Punjab, a very large proportion of the municipal tax revenue is derived from octroi duties:—

Provinces.	Number of towns levying octroi in 1913.	Number of towns levying octroi in 1923.	Total revenue from octroi.		Total revenue from rates and taxes.		Percentage.	
			1913	1923	1913	1923	1913	1923
Central Provinces ..	23	19	9,67,991	14,50,533	19,40,075	38,20,030	49·89	38
United Provinces ..	57	28	35,91,006	34 87,041	91,45,399	86,19,134	39·26	40·45
Punjab	96	81	37,50,987	46,49,015	41,97,684	73,18,903	89	63
Behar and Orissa ..	1	1	26,669	53,177	14,11,262	22,08,000	2	2·5
Bombay	106	94	27,63,869	28,83,566	59,64,737	1,22,71,164	47	24
North-West Frontier Province.	..	6	..	8,15,046	..	8,23,223	..	99
Madras	An octroi is levied on firewood in the Madras city.							

The method of collection.

For the purpose of octroi duties, articles are usually classified under eight or nine heads, the classes being

(1) articles of food for men and animals,

(2) animals for slaughter,

(3) articles for fuel, lighting and washing,

(4) building materials and furniture,

(5) drugs, spices, gums and perfumes,

(6) tobacco,

(7) piece-goods, textile fabrics and articles of clothing,

(8) metal and articles of metal, and

(9) miscellaneous.

The method of assessment varies with the province. The tax may be (1) calculated *ad valorem*, (2) based on the total weight, or (3) in the case of bulky articles, based on the cubical contents as ascertained by the space occupied in the cart. Except in the Central Provinces no maximum rates are laid down by the Government. A feature of the Central Provinces system is that, in the case of a large majority of the articles, the rate is based on the nature of the conveyance in which the article is imported. Separate maximum rates have been laid down for

(a) carts with iron axles,
(b) carts with wooden axles,
(c) pack bullocks, and
(d) head loads.

Weighment is consequently dispensed with, except in a few cases such as oils, pan, leaf tobacco, etc.

The method of collection and assessment varies according as the consignment is imported by road or by rail. In the case of articles imported by road, the muharrir, who is usually a low-paid subordinate, collects the tax at the barrier of import. After weighing the consignment, he collects the duty at the rate given in the schedule, provided it does not exceed a specified sum. In the case of large consignments the importer usually proceeds direct to the head office and pays the octroi there. The great majority of the consignments dealt with at the outpost barriers of municipalities are head loads. The muharrir usually determines the value according to a monthly price list supplied to him.

Through traffic.

In the case of articles which are to be exported immediately the trader may be given a transit pass in which all the particulars of the consignment are entered. The procedure observed, however, varies with the municipality. In many of the towns in the United Provinces a chaprassi acts as an escort until the consignment leaves the town. In a few cases the importer, having declared his consignment as for immediate export, pays the octroi at the barrier of import and recovers the amount at that of export. It is seldom, however, that the procedure is so simple as this and the following description taken from the report of the Municipal Taxation Committee appointed in the United Provinces in 1908 gives a clearer idea of the hardships to which the trader is subject:—

"The points at which the through trader is put to expense are numerous. In the first place, on arrival at the barrier of import, he has to deal with the muharrir and chaprassi there, and it is probable that there are few places where nothing is paid to these officials. He is then referred to the head office, and owing to the extra distance to be travelled, and to the delay inevitable in assessment at that office, he must pay more for cartage than if he were to take his consignment direct to his godowns. He has to pay the coolies who take the bags or boxes from the cart, for weighment and examination, and who reload them when examination is complete. If the consignment is contained in boxes or bales and these are opened, the opening, repacking and closing put him to expense again. There is also the possibility of theft, and, as we have explained above, the probability of considerable damage. He has also to pay the wages of the servant who accompanies the consignment for assessment. In addition, it is probable that in the ordinary case he is compelled to give a douceur to the officials who carry out the assessment. A similar chain of expense is a feature of export transactions. The exporter has to convey his goods to the head office, to pay the extra cartage, and the wages of the coolies who handle his goods. He has again to pay his servant who accompanies the consignment. He must pay the person who writes the application for refund, and underlings in attendance on the verifying officer. The consignment then passes on to the export barrier, and there he has to satisfy the demands of the barrier muharrir. The refund application having been endorsed, he has again to pay the servant who presents it for payment, and there is frequently a fixed fee payable to the refund muharrir and his chaprassi.

"If the consignment is imported for immediate export and a transit pass is demanded, no chaprassi is forthcoming as escort until the muharrir's demands have been staisfied, and the chaprassi receives a recognised amount, known as *khurak*, diet money, for accompanying the cart. At the barrier of exit again something has to be paid in order to prevent unloading for detailed examination of the consignment, with the professed object of ensuring that nothing has been sold *en route* within the octroi area. In none of the cases mentioned are the illicit charges heavy, nor are they in general complained of. They are looked upon as a legitimate perquisite of the officials concerned, and as long as the demand is restricted to the recognised rate, they are usually paid without demur. In the aggregate, however, they amount to a considerable sum, and the income realized by some of the municipal subordinates is very large."

It is reported that as a consequence of the vexation and trouble involved in Delhi and some other towns, a class of professional brokers has arisen who make it their business to buy claims for refunds from traders at a heavy discount.

In the case of consignments which are received by rail the procedure is somewhat simpler. The importer is in most cases allowed to take his railway receipt or declaration to the head octroi office and the octroi is assessed by the superintendent there. The importer pays the duty and obtains a pass, which he takes to the railway barrier, and the goods enter the municipality on the strength of this pass.

Arrangements for composition.

To mitigate the serious difficulties inherent in the collection and assessment of octroi by ill-paid subordinates various expedients have been tried in several municipalities. The most important of these is the system of composition, under which the trader is allowed to compound on the basis of the net octroi payments of the previous year. He is required at the same time to prepare a pass in respect of each consignment imported containing particulars of imports sufficiently detailed to allow the octroi staff to calculate the octroi which would have been paid if he had not compounded, as this is the basis on which composition will be allowed in the following year. In other words, he pays one year in arrears. In some cases the traders are allowed to compound provided they submit all their invoices to the octroi superintendent. In one municipality in the United Provinces the traders have come to an agreement with the municipal board under which octroi is to be paid only on the excess of the imports over the exports. An account of imports and exports is maintained by the municipality at its own expense in the form of a ledger for each trader included in the arrangement and monthly bills for the amount due are sent to them.

The terminal tax.

The terminal tax is practically an octroi without refunds assessed on a maundage basis at varying rates for different classes of goods and collected through the railway agency. The terminal tax schedule usually follows the classification of goods adopted by the railway, and so far as the method of assessment and collection is concerned it is free from the objectionable features of the octroi described above. To avoid evasion of the terminal tax a road toll is often levied on articles imported in the town by road. The toll is generally collected at a fixed rate per cart and such collection does not present any administrative difficulties, but in some municipalities the toll is graduated with reference to the nature of the goods, which means that all the worst features of the octroi are liable to be re-introduced without the one advantage of refund on re-export.

The following table summarizes the figures available in relation to this tax:—

Province.	Number of towns levying terminal tax in 1913.	Number of towns levying terminal tax in 1923.	Total revenue from terminal tax. 1913.	Total revenue from terminal tax. 1923.	Total revenue from rates and taxes. 1913.	Total revenue from rates and taxes. 1923.	Percentage. 1913.	Percentage. 1923.
	RS.	RS.	RS.	RS.	RS.	RS.		
Central Provinces.	1	21	29,992	8,11,040	19,40,075	38,20,030	15	21
United Provinces..	1	18	2,93,636	14,86,281	91,45,399	86,19,184	3	17
Punjab	Nil	19	Nil	17,83,133	..	73,18,903	..	24
Bombay ..	..	31	..	25,88,326	..	1,22,71,154	..	21

Advantages and disadvantages of the Octroi and Terminal Tax.

As a form of municipal taxation there are claimed for the octroi several important and outstanding advantages, in a country like India where the population is temperamentally averse to a system of direct taxation, and the inquisitorial procedure which the latter involves. A large sum of money is required for municipal purposes and the octroi is one of the most productive taxes. So long as the rates are moderate the burden which it imposes, as in the case of all other indirect taxes, is not obvious especially to the illiterate classes. Even when it is passed on the the consumer, it is so small in the case of each separate transaction that it is said not to be noticed by the purchaser, who probably puts it down to high prices or bad seasons and not to taxation. It is collected from a comparatively small class, mainly the traders, and, above all, it has the sanction of immemorial usage. Its burden on the poor may have been to some extent exaggerated inasmuch as the wages of the poorer classes have probably gone up on account of the rise in the price of the articles taxed, many of which are necessaries of life. To some extent the tax is borne by residents outside the municipal limits, who come to the town for making purchases. Moreover, the tax has the great advantage of growing with the prosperity of the town.

On the other hand, it is argued that the tax, being a tax on the necessaries of life, fall, with special severity on the poorest classes, so much so in some cases as to have led to migrations from city limits. In addition to this the cost of collection is very high, in spite of the very small salaries that are usually paid to the staff. The tax also involves a serious interference with the natural course of trade on account of the difficulties of assessing and collecting it. The terminal tax is more popular when the rates are low, but the dangers of its developing into a transit duty in the absence of effective control over the rates are very great.

The incidence of the tax.

The question of incidence was considered at some length by the United Provinces Committee on Local Taxation. They divided commodities into three classes for the purpose of determining it—

(1) Raw produce intended for consumption in the state in which it was imported such as vegetables, rice and firewood.

(2) Raw produce for manufacturers, such as cotton, iron and timber.

(3) Manufactured goods.

In the case of articles included in the first class the incidence should fall on the consumers of the articles if economic forces have full play, but the operation of the laws of supply and demand in India is often hindered by peculiarities of the trade. For instance, crops are often sold long before the harvest and the prices are consequently determined a considerable time before the article is actually exported from the village. Even when the tax is passed on to the consumer in the shape of a higher price for the articles, the incidence, in the case of an old tax like the octroi, has undoubtedly to some extent been transferred, in the case of the poorer classes at any rate, to the employers, since wages may be assumed to have risen in consequence of the higher prices of food articles.

In the case of raw produce for manufacture, the price of the article is usually fixed by conditions independent of those prevailing in the local area, and the manufacturer is therefore not in a position to raise the price of the article as a consequence of the imposition of an octroi duty on the raw material. The incidence will therefore be on the manufacturers, unless they can shift it to the producers of the raw material. In the case of imported manufactured articles, if the scale of profit is considerable, the octroi duty is in most cases borne by the merchant, but where competition is keen and the merchants work on small margins the octroi has to be added to the price and is consequently passed on to the consumer.

These are general observations, however. The United Provinces Committee after a detailed enquiry came to the conclusion that no general rule could be laid down as to the incidence of the octroi duty, but that it would be incorrect to state that the octroi invariably falls on the consumers.

It would appear from the evidence given before the Committee that the octroi is generally an unpopular tax, but has survived mainly on account of the greater unpopularity, especially among the classes from which the municipal boards draw their members, of any system of direct taxation. The terminal tax is theoretically more objectionable inasmuch as it does not provide for exemptions in the case of through trade, but so long as the rates are low, it is distinctly the less unpopular of the two, one main reason being that it is not distinguished from the railway charge. In the absence of any effective control by the Government, the tax is however apt to degenerate into a transit duty, and unless some

method of control is devised, it is likely to prove as great a menace to trade as the old transit duties. The Government of India presumably relaxed their control in the belief that local bodies would not injure the trade of their towns by imposing heavy terminal taxes and that in extreme cases they would be able to interfere by asking the railways, to refuse to collect the tax. It would appear, however, from the nature of the proposals made by some of the municipalities that this confidence was misplaced and that grave injury may be done to the trade if present conditions continue. At the same time it would be difficult at this stage to refuse the co-operation of the railways, and even if that were done, there would be nothing to prevent a municipal board from setting up a barrier just outside the railway gates.

The dangers of the present state of affairs.

The dangers of the present state of affairs have been forcibly brought out in the evidence of Mr. Sim, from which the following is an extract:—

"The railway authorities cannot but regard this state of affairs with grave misgivings. The essence of the matter is that a terminal tax can be justified only so long as it is a light tax and is not allowed to become oppressive. And it was a condition of the Government of India's acceptance of the principles of terminal taxation in 1913 that it should be a very light duty and substantially lower than octroi and should only be "introduced in replacement of existing octroi. Indeed, the accumulation of these petty burdens may become a very sensible infliction in the end, and in matters of commerce it requires a very narrow margin indeed to turn the scale between a profitable trade and a languishing one. The rules of 1917 were some safeguard against the imposition of unduly high rates. But in the changed conditions they are no longer any safeguard.

"There is a growing tendency noticeable on the part of the Local Governments to agree to the imposition of terminal taxes, and although some small local advantages may be thereby attained, the authorities responsible are not in a position to estimate the real injury that is being inflicted upon important general interests. The multiplication of numerous different schedules at numerous municipalities, with no limit to the rates which may be charged, (a) hampers commerce, (b) may lead to what in effect would be differentiation in the treatment of goods of different provinces, and (c) interferes with railway earnings and receipts by increasing the cost of transport and delivery of merchandise.

"As regards this latter point, it has to be borne in mind that the determination of rates and fares is a very intricate business requiring careful consideration of local conditions and of the rates which a particular industry or particular traffic will bear. It is impossible to fix rates from time to time at such a level as will lead to an increase in traffic and at the same time be in the long run remunerative to railways, or to adjust them with a view to the results anticipated from the whole of the rates structure in the long run, if such delicate arrangements are to be distributed to suit the budgets of local bodies. The imposition of such rates does not only encroach upon the margin available for increasing railway rates, but is likely to divert short-distance traffic to roads, and generally to upset the whole of the calculations of traffic experts regarding the ability of different kinds of traffic to bear particular rates and so ultimately likely to produce a diminution both of traffic and of revenue. It was for this reason that railway companies insisted during the discussions in 1916-17 that their prior concurrence should be obtained in each individual case where it was proposed to impose terminal tax in lieu of octroi.

"It is difficult for the Central Government to try to watch the economic development of the country and adjust railway rates and customs duties after careful examination of trade tendencies, when municipalities which are the true distributing centres, can upset all calculations, practically to any extent, by haphazard variations of local duties on trade goods. In some cases these duties are a considerable surcharge on the railway and customs revenues, and as local autonomy increases, the terminal tax may be enhanced until there is little or no margin left for customs duty consistently with the maintenance of trade."

A summary of the limitations under which the taxes should be worked, if continued.

To sum up, if the octroi and terminal tax are to be continued as part of the scheme of taxation this should only be allowed subject to some such limitations as the following:—

(1) The rates of taxation should be low in all cases and especially so in the case of necessaries of life and articles that are subject to imperial or provincial taxation.

(2) In order to prevent the tax from developing into a transit duty, arrangements should be made for prompt refunds on exports and for bonding goods intended for through transit.

(3) The staff should be properly paid and efficiently controlled by an official agency with which elected representatives should have no power to interfere.

(4) The terminal tax, which is an octroi without refunds, should be levied on all packages with reference only to weight and without reference to contents. The rate should be kept low and the Government of India in the interests of inter-provincial traffic and the railways, should retain a full measure of control. In any case in which a terminal tax is substituted for an octroi, the tax should be fixed at such a rate that the total proceeds do not exceed the average revenue from octroi during the preceding three years.

(5) The tax should not be levied on goods imported and re-exported without break of bulk.

(6) Where it is thought legitimate to derive a municipal revenue from a single staple, e.g., from cotton ginning in a town, it is better to impose the tax direct on the output of the ginning mill.

(7) The levy of a tax on goods exported from a municipality should not be permitted save in exceptional cases where it is already in existence.

(8) Goods not leaving a railway yard or only leaving port premises for a railway, and merely transhipped at the yard or port premises, should not be subject to any duty whatever.

TAXATION OF SALES.

On the assumption that local taxation of commodities is to continue.

In considering the possible alternatives to the octroi and terminal taxes it is not proposed in the present note to examine the alternative afforded by direct taxes such as the house tax or the profession tax. What is proposed is, starting on the assumption that a consumption tax is inevitable, to consider whether it is not possible to arrange for it in a less objectionable way than through the imposing of a local customs duty at barriers set up at the entrances of towns.

A tax on sales is indicated as appropriate.

There are several indications of a tendency to convert the existing taxes into taxes levied directly or indirectly on sales. The arrangements for composition that have been referred to indicate a tendency in this direction. So also does the proposal to convert the octroi tax in certain towns in Bombay into a tax on cotton goods produced. Meanwhile in Burma the largest item of municipal taxation is taken indirectly in the shape of a tax on sales through the auctioning of the right of use of stalls in municipal markets. Similar practices obtain elsewhere in the case both of markets and of slaughter houses.

Antiquity of taxation in this form.

The taxation of sales is a very ancient practice, both in India and elsewhere, and it has been largely revived principally as a system of State taxation owing to the financial difficulties that have followed the War. It is now proposed to examine the systems adopted with a view to seeing whether they offer any suitable method of local taxation as an alternative to the octroi, and it seems desirable to do this in some little detail owing to the great variety of methods employed and to the difficulty that sometimes exists in distinguishing a tax of one class from one of another.

Traces of general taxes on sales are found in the history of Egypt and Rome. A tax of this nature was also an important source of revenue in ancient India. According to the picture of the fiscal administration of a State in ancient India given by Manu, one of the principal sources of State revenue was a tax of 5 per cent on the cost price of market goods as ascertained "by experienced men well acquainted with all goods bought and sold". In addition to this, the King was entitled to one-fiftieth part of cattle and gold, one-sixth part of trees, meat, honey, ghee, perfumes, grass, hides, etc., and to a half part of the precious minerals dug out of the earth. The most famous example of such a tax, however, is provided by the Middle Ages in the "Alcavala", which was introduced in Spain about 1341, and was only abolished in 1819. This was a general tax on all sales of property, whether movable or immovable, ranging from 5 per cent up to as much as 14 per cent, and much of the decay of Spanish trade and manufacture has been attributed to it.

From the Spanish Alcavala are directly descended the present Mexican Sales Tax, organised by Sr. Limantour in 1893 on the basis of 6 per cent, and the Philippine Sales Tax imposed in 1905 at one-third per cent. (These rates have since been increased to 1.5 per cent and 1 per cent, respectively.) The Sales Taxes of the American Civil War seem to have arisen in the first place as specific excise taxes, upon a very large number of specific articles, rather than as a general system of a tax upon all sales subject to certain exceptions. Independently of the contemporaneous American system a general sales tax was introduced in Bremen in 1861 and continued until 1864. The rates were at first five-twelfths per cent and one-sixth per cent and subsequently a uniform rate of one-sixth per cent.

General sales taxes have always sprung from urgent financial necessity. The nearest approach to sales taxes in the United Kingdom is to be found in the code of taxation necessitated by the Napoleonic wars, when taxes were laid on nearly everything that a man eats, feels, sees, smells or hears.

This system was brought to an end by Peel in his reform of the tariff system, and by Gladstone concentrating the internal excise duties on to a small number of commodities, of widespread but non-necessary consumption. After the Franco-Prussian war of 1870 France discussed a project for a turnover tax, but it was killed by the objections of the economists on the grounds that it would give an unfair advantage to the large dealer and that it would be difficult to get people to keep records of their turnover, so that the tax would be largely evaded.

The revival after the war.

To-day, following the demoralised condition of national finance throughout Europe, turnover or sales taxes have been passed in France, Belgium, Italy, Germany, Czecho-Slovakia, Hungary and Rumania. The only Anglo-Saxon community which has adopted such a tax is Canada.

The scope of the various taxes in force varies greatly. Some extend to all transactions in goods, whether wholesale or retail, as in the case of France, Germany, Czecho-Slovakia and Mexico. Others are limited to wholesale transactions in goods only, for instance, Belgium, Italy and Canada. Usually there is a flat rate for all transactions, though differential rates for specified transactions exist in Italy. Exemptions are granted of various kinds and weights, while services are taxed here and exempted there, or divided into categories elsewhere. The treatment of imports and exports varies; public utility undertakings are exempt in one country and liable in another. *Ad hoc* taxation of special commodities or transactions gives exemption from the turnover tax in some cases and in other cases does not. Exchanges are sometimes liable as two sales, sometimes as one, and in other countries exempt. The price on which the sale is taxable may include the sales tax, or any customs duties, or may exclude these elements. In fact, it is difficult to say that any uniform scheme runs through the taxes in force, which seem rather to have been framed to meet individual circumstances and needs and not upon any general principle.

Some factors in the schemes may be eliminated.

It is possible, however, in considering these schemes of taxation from the point of view of the discovery of a substitute for the octroi, to eliminate a number of factors which have given rise to difficulties in working them as part of a scheme of State taxation. Thus it is unnecessary to consider the taxation of capital transactions, which are already dealt with by the stamp duties. The taxation of services may also be put out of the question. Nor is it desirable to consider the taxation of public utility concerns, or of transfers of goods otherwise than for money.

The points that remain.

The remaining difficulties are concerned mainly with three points, viz., (1) the stage at which the tax is to be imposed, (2) the categories of articles to be taxed or exempted and (3) the administration of the tax.

The stage at which the tax is imposed.

As regards the first of these points, as has been pointed out in the opening paragraphs of this note, there are three ways in which the tax can be taken, (a) as a tax on all transactions, which is thus cumulative in the case of goods that pass through several processes or several hands: in this form it is generally described as a turnover tax; (b) as a tax on wholesale transactions only, which is generally known as a merchants' sales tax; and (c) as a tax on retail sales.

A general tax on turnover.

In the case of a turnover tax the cumulative element raises great difficulties, for instance, in its reactions on the tariff policy in the case of goods imported or exported, in the complications that arise as between combined concerns that carry out two or more processes which would involve separate taxation when each was carried out by a single one, in the case of persons trading abroad and so forth. It is sufficient to mention these points to show that a tax of this type would not be suitable as an item of local taxation.

A tax on wholesale transactions.

A merchants' sales tax, somewhat on the lines of that working with apparent success in Canada, would appear to avoid the more serious difficulties which surround a turnover tax, but introduces other difficulties of its own. A merchants' sales tax would be imposed only on the occasion of the sale of goods. The movement leading up to the final use of consumption of goods falls into four fairly well-defined stages, viz.,—

(a) the extraction, growth or the purchase from abroad of raw materials;

(b) various stages of manufacture, whether carried out by different concerns or not;

(c) handling by the wholesale merchant, sometimes accompanied by processes of blending, sorting or other treatment;

(d) distribution or sale by the retailer to the consumer.

Apart from transport, which intervenes at every stage, there may be interposed at any point the services of other persons, in the capacity of agents of various descriptions, acting for the seller, the buyer, or for both. Moreover, one or more of the stages described may be omitted, as when, for instance, the colliery sells direct to the householder, or the manufacturer of motor cars sells direct to the user. The complexity of the industrial structure permits of many combinations of these different processes or functions, but broadly speaking, there is a fairly clear distinction between (a) growers or extractors of raw material, and manufacturers and wholesalers of goods, and (b) retailers and consumers. It is at this dividing line and at this point alone that the merchants' sales tax is imposed.

In order to enable this to be done, it would be necessary to define sales by wholesale as all sales other than sales by retail, and to define sales by retail as sales made to a person for his final use and consumption for domestic and private purposes as distinguished from purposes of trade or business. The next step would be to register and license all persons conducting sales of the former kind, to require them to keep books and to render returns and to tax them with reference to these latter. It will be obvious that the effect of a general excise of this kind must be to repress or divert in some measure the free play of economic forces that tend to the maximum production of wealth, and that many practical difficulties would arise, even in the case of a State tax, in determining the line between wholesale and retail, and in dealing with hire transactions, transactions in goods that are liable to customs duties and with certain classes of services. From the point of view of local taxation, however, there is one objection which outweights all these, namely, that what it is desired to tax is the consumption of the locality, and that what would be affected by a merchants' sale tax would be only the consumption of the consumers of goods sold by wholesale within the local area, whether resident in it or not, while the consumption by the inhabitants of the local area of goods not sold wholesale within the area would escape.

A tax on retail sales.

There remains the third alternative of a tax on retail sales. The following is a sketch of the manner in which a tax of this nature would probably be worked in a European country:—

The first step would clearly be to obtain a register of the names and addresses of all retailers. This might be satisfactorily achieved by requiring every retailer to take out a license to trade by filing a statemet of name, address and nature of business. The department to be charged with the administration of the tax would then be able to serve each retailer with a form on which to record his takings day by day or week by week. The form might be designed to last, say, three months, at the end of which period the percentage of tax could be calculated and paid over and a new form issued for the ensuing period. Powers would of course have to be taken to compel registration, to penalise unlicensed trading, failure to make correct returns, etc.

Since the tax is intended to be passed on to the purchaser, it is most important that the full amount of the tax due should be collected, otherwise the tax would *pro tanto* become merely a source of additional profit to the retailer. The possibility of collecting the full amount of tax would depend on (1) the ability of the retailer to render a complete return, and (2) the institution of an effective check upon the returns rendered.

The retailer in a large way of business would experience no difficulty and probably not much trouble, in making accurate returns of his turnover, but the majority of retailers—the village store-keeper, the small shopkeepers in suburban and industrial districts,—are primitive in their business methods. Many cannot, and many more do not, keep books, nor would there be any substantial personal advantage in their doing so. The habit of living out of the till without any record is incurable; the habit of taking goods out of the shop for personal consumption and of paying trade expenses out of the till without record is common. This class of retailer could not tell at present with any approach to accuracy what his turnover was, and even if he could be presumed competent to compile an accurate return for the purposes of the tax under the scheme outlined above, the means by which his return could be checked or verified would be entirely lacking.

A check on the accuracy of the retailers' returns could be effected in a certain number of cases by means of the accounts furnished for income-tax purposes. This check would be fairly complete and would involve only a small additional staff, but it would only touch the small minority of retailers, and there the least likely to make inaccurate returns.

In the case of a further large number of retailers a check of some value but not nearly perfect would be effected by means of a staff of inspectors who could visit the shops and compare the returns with what records of sales the retailers kept, their records of purchases from wholesale houses, etc.

In the case of the remainder who kept no records, nothing could be done but to oppose an official estimate of turnover to the retailer's return.

As in a large proportion of cases it would be impossible to agree a figure which would be acceptable both to the retailer and to the Revenue, some provision would have to be made for enabling an assessment of tax to be made in excess of the retailer's return, and some tribunal would have to be set up to hear and determine objections to that assessment—unless it proved possible to induce the Income-tax authorities to act in the matter. Here again the tribunal would be handicapped by the absence of material for arriving at a satisfactory assessment.

The general objections to such a tax.

It may also be useful, with a view to seeing how far they are applicable in India, to consider the objections to this tax that would unquestionably be advanced in England. These may be stated briefly as follows:—

(1) that the imposition of the tax would result in an immediate rise in the prices of commodities;

(2) that there would be no guarantee that the retailer would not pass on to the consumer more than the amount of the tax;

(3) that unless drastic exemptions of "necessaries" were allowed, the tax would press with altogether disproportionate severity upon the poorest classes of the community and upon heads of families with dependents to support;

(4) that if such exemptions were given, great complications would ensue whenever a retailer sold exempted goods as well as goods that were liable to the tax; and

(5) that a tax of the kind could never be anything but unequal in its incidence and for the most part unscientific in its administration.

Consideration of these in their application to the proposed substitution of the tax for the octroi.

The general force of all these objections may at once be admitted. But it may be repeated that what is under consideration in the case of India is not the desirability of taxation of this kind as compared with a scheme of direct taxation, but the question whether, granted that indirect taxation is to continue, a tax of this kind would be more or less objectionable than the octroi. For the purpose of such an enquiry, the objections named may be examined in turn.

As regards the first and second, it is clear that in India in the towns in which octroi taxation is in force, the increase in prices which is due to the imposition of a general excise, has long since taken place, and that there is certainly no more guarantee against undue enhancement by the retailer under the octroi system than under the other.

As regards the third, it will be seen from the description of the octroi in India that it already falls principally on the necessaries of life, and so with undue severity on the poorest classes of people and the heads of families. The substitution of a general tax on retail sales would, if anything, tend to shift a part of the taxation on to other articles.

The fact that necessaries are already included in the scheme of taxation would avoid the necessity for the exemption which would be the cause of the complications that would ensue when a retailer sold both exempted goods and goods that were liable to tax.

The tax would undoubtedly be unequal in its incidence and for the most part unscientific in its administration. But it would be very difficult for it to be worse in these respects than the octroi.

Advantages of the tax over the octroi.

On the other hand, being levied only on retail sales in the town, (1) it would not be a tax on industry, (2) it would not be a tax on transport, (3) it would at least be more difficult than in the case of the octroi for the town shopkeeper to shift it on to the countryman who takes his produce into the town for sale, and (4) being levied entirely on an *ad valorem* basis, it would probably be more productive than the octroi.

Proposals for administration of the tax—the advantages of statutory accountancy in Europe.

It remains to consider briefly the manner in which such a tax, if imposed, could best be administered in India, and here it may be useful to note at the outset a feature of the general administration of the countries in which taxation of this class finds most favour which is wanting in England and in India, that is the statutory provisions for the keeping of accounts.

In France, for instance, the Code of Commerce in the Code Napoléon lays a duty upon any one carrying on trade or commerce to keep books of account, which it specifies in detail. Every trader must keep a journal, which in the words of the Code must show day by day his assets and debts, his business transactions, negotiations, and acceptances or endorsements of bills, and generally all that he receives or pays on any account whatever. The trader must close and sign the Journal once a year. He is required to file all letters which he receives and to copy all those he sends. He must also make a private inventory, signed by him every year, of his real and personal property and of his assets and debts, and copy this information year by year into a book kept specially for the purpose. If the trader does not keep these books he renders himself liable to the penalties attaching to fraudulent bankruptcy, and if he keeps them irregularly, he is debarred from producing them in court as evidence. Business books, if properly kept, are allowed as evidence between traders in case of dispute in matters which concern trade. If one trader produces books, even irregularly kept, and the opponent trader cannot produce books, this fact carries great weight in effecting a decision in favour of the former.

A sales tax is largely dependent for its full yield upon accurate records of innumerable daily transactions. It will therefore be readily perceived that the imposition of such a tax is likely to meet with considerably fewer difficulties in a country where a national requirement of the foregoing description has been in force so long as to become an ingrained commercial and trading habit. The French Code of Commerce dates from 1807. Somewhat similar statutory requirements as to the keeping of trading and commercial books are in force in other countries where a turnover tax has been imposed, notably in Belgium, Italy, Germany, Czecho-Slovakia and Rumania.

In India it would be necessary to insist on returns in the case of the larger trader.

While the scheme sketched above of the steps that would be necessary if a tax of the kind were introduced did not involve the requirement of statutory accounts, it did involve a return of takings with a provision for a penalty for not making it correctly. In India it would no doubt be desirable to provide for forms of return, but the penalty would probably take the form, as in the case of the income-tax, of assessment on estimates if no return were filed. It has been seen that already in some towns the merchants have arranged to compound with the municipal councils for periodical payment of octroi based on accounts of imports and exports, and it is evident that to those who can do this there would be no disadvantage, but rather the reverse, in the substitution of returns of actual sales. At a later stage perhaps power might be taken for the revenue authorities to have access to the accounts and to call for evidence from wholesale dealers as to transactions entered therein.

And to license traders whether large or small.

The case of the small trader would be much more difficult. But in this case, as in that of the larger dealers, it is evident that a license would be an element of the administration, and it would probably be convenient to make a charge for this, which would be deducted from the sum due on sales in the case of merchants who rendered accounts and in the case of the smaller shopkeepers would represent their payments of the tax unless and until they either submitted returns or were assessed on estimates. The charge might be quarterly or half-yearly with the option to make it monthly in the case of persons trading in the town only for temporary periods.

The staff to administer the tax.

It would be essential that the administration of the tax should be in the hands of officers of a better class than those who administer the octroi, and who moreover should be independent of local politics. They could probably be best obtained on loan from the Revenue Department.

Appeals should lie to the Collector or one of his Assistants or subordinates. The Collector should also be responsible for securing the assistance of the income-tax authorities in the larger cases.

The tendency would be to develop

It will be seen that, just as in certain cases the octroi tends to be converted into a tax on sales, so the tax on sales as above outlined, would tend to develop into a graduated profession tax.

APPENDIX XIV

Bibliography.

I.—ACTS AND MANUALS—

(A) *Acts and Regulations*—

The Bengal Permanent Settlement Regulation I of 1793.
The Bengal Revenue-Free Lands Regulations XIX and XXXVII of 1793.
The Madras Proprietary Right and Permanent Settlement Regulation XXV of 1802.
The Madras Validity of Titles to Lakhiraj Tenures Regulation XXXI of 1802.
The Bengal Land-Revenue Sales Regulation V of 1812.
The Bengal Leases and Land-Revenue Regulation XVIII of 1812.
The Bengal Patni Taluks Regulation VIII of 1819.
The Bombay Regulation VIII of 1827.
The English Parochial Assessments Act, 1836.
The Indian Property in Land Act IV of 1837.
The Madras Inland Customs Act VI of 1844.
The Bombay Town Duties Abolition Act XIX of 1844.
The Bombay Land Customs Act XXIX of 1857.
The Bengal Rent Act X of 1859.
The Indian Stamp Act XXXVI of 1860.
The Indian Income-Tax Act, 1860.
The Madras Revenue Recovery Act II of 1864.
The Ind'an Tolls Act XV of 1864.
The Madras Irrigation Cess Act VII of 1865.
The Indian Succession Act X of 1865.
The Parsee Intestate Succession Act XXI of 1865.
The Village Chowkidari Act VI of 1870.
The Indian Court-Fees Act VII of 1870.
The Hindu Wills Act XXI of 1870.
The Bengal Village Chowkidari Act I of 1871.
The Indian Income-Tax Act XII of 1871.
The Indian Contract Act IX of 1872.
The Government Savings Banks Act V of 1873.
The Northern India Canal and Drainage Act VIII of 1873.
The Burma Land and Revenue Act II of 1876.
The Bombay City Land Revenue Act II of 1876.
The Bengal Irrigation Act III of 1876.
The Indian Opium Act I of 1878.
The Bombay Abkari Act V of 1878.
The Indian Sea Customs Act VIII of 1878.
The Northern India Ferries Act XVII of 1878.
The Bombay Irrigation Act VII of 1879.
The Bombay Land Revenue Code of 1879.
The Indian Stamp Act, 1879.
The Burma District Cesses and Rural Police Act II of 1880.

I.—ACTS AND MANUALS—*contd.*

(A) *Acts and Regulations*—contd.

The Bengal Cess Act IX of 1880.
The Kazis Act XII of 1880.
The Indian Probate and Administration Act V of 1881.
The Indian Negotiable Instruments Act XXVI of 1881.
The Indian Trusts Act II of 1882.
The Transfer of Property Act IV of 1882.
The Indian Companies Act VI of 1882.
The Indian Salt Act XII of 1882.
The Presidency Small Cause Courts Act XV of 1882.
The Central Provinces Local Self-Government Act I of 1883.
The Punjab District Boards Act XX of 1883.
The Bengal Municipal Act III of 1884.
The Madras District Municipalities Act IV of 1884.
The Madras Local Boards Act V of 1884.
The Bengal Local Self-Government Act III of 1885.
The Bengal Tenancy Act VIII of 1885.
The Madras Excise Act I of 1886.
The Assam Land and Revenue Regulation I of 1886.
The Indian Income-Tax Act II of 1886.
The Suits Valuation Act VII of 1887.
The Punjab Tenancy Act XVI of 1887.
The Punjab Land Revenue Act XVII of 1887.
The City of Bombay Municipal Act III of 1888.
The Upper Burma Land and Revenue Regulation III of 1889.
The Madras Salt Act IV of 1889.
The Succession Certificate Act VII of 1889.
The Central Provinces Land Revenue Act XVI of 1889.
The Indian Railways Act IX of 1890.
The English Stamp Act, 1891.
The Madras City Civil Court Act VII of 1892.
The Indian Tariff Act VIII of 1894.
The Indian Cotton Duties Act II of 1896.
The Inland Bonded Warehouses Act VIII of 1896.
The Indian Excise Act XII of 1896.
The Berar Land Revenue Code of 1896.
The Provident Funds Act IX of 1897.
The Burma Municipal Act III of 1898.
The City of Bombay Improvement Act IV of 1898.
The English Finance Act, 1899.
The Indian Stamp Act II of 1899.
The North-Western Provinces and Oudh Municipalities Act I of 1900.
The Bombay District Municipal Act III of 1901.
The United Provinces Land Revenue Act III of 1901.
The Native Christian Administration of Estates Act VII of 1901.
The Indian Tea Cess Act IX of 1903.
The Burma Canal Act II of 1905.
The Provincial Insolvency Act III of 1907.

I.—Acts and Manuals—*contd.*

(A) *Acts and Regulations*—contd.

The Coorg Municipal Regulation, 1907.
The Madras Estates Land Act I of 1908.
The Code of Civil Procedure V of 1908.
The Indian Limitation Act IX of 1908.
The Indian Salt Duties Act X of 1908.
The Indian Registration Act XVI of 1908.
The Bengal Excise Act V of 1909.
The English Finance Act (1909-10) 1910.
The United Provinces Excise Act IV of 1910.
The Punjab Municipal Act III of 1911.
The Calcutta Improvement Act V of 1911.
The Bengal Mining Settlements Act II of 1912.
The Administrator-General's Act III of 1913.
The Punjab Excise Act I of 1914.
The Chota-Nagpur Rural Police Act I of 1914.
The Jharia Water Supply Act III of 1914.
The Indian Motor Vehicles Act VIII of 1914.
The Bombay Town Planning Act I of 1915.
The Bihar and Orissa Excise Act II of 1915.
The Central Provinces Excise Act II of 1915.
The United Provinces Municipalities Act II of 1916.
The Central Provinces Land Revenue Act II of 1917.
The Burma Excise Act V of 1917.
The Post Office Cash Certificates Act XVIII of 1917.
The Government of India Act, 1919.
The Central Provinces Canal Management Act I of 1919.
The Madras City Municipal Act IV of 1919.
The Bengal Village Self-Government Act V of 1919.
The United Provinces Town Improvement Act VIII of 1919.
The Indian Securities Act X of 1920.
The Imperial Bank of India Act XLVII of 1920.
The English Finance Act, 1920.
The Central Provinces Local Self-Government Act IV of 1920.
The Bihar and Orissa Mining Settlements Act IV of 1920.
The Madras District Municipalities Act V of 1920.
The Rangoon Development Trust Act V of 1920.
The Madras Town Planning Act VII of 1920.
The Bombay Village Panchayats Act IX of 1920.
The Madras Local Boards Act XIV of 1920.
The Madras Village Panchayat Act XV of 1920.
The Burma Rural Self-Government Act IV of 1921.
The Central Provinces Municipalities Act II of 1922.
The Indian Stamp (Bombay Amendment) Act II of 1922.
The Bihar and Orissa Court-Fees (Amendment) Act II of 1922.
The Assam Court-Fees (Amendment) Act II of 1922.
The Assam Stamp (Amendment) Act III of 1922.
The Bengal Stamp (Amendment) Act III of 1922.

I.—Acts and Manuals—*contd.*

(A) *Acts and Regulations*—concld.

The Punjab Village Panchayat Act III of 1922.
The Bihar and Orissa Village Administration Act III of 1922.
The Punjab Town Improvement Act IV of 1922.
The Bengal Court-Fees (Amendment) Acts IV and VI of 1922.
The Madras Court-Fees (Amendment) Act V of 1922.
The City of Rangoon Municipal Act VI of 1922.
The Madras Stamp (Amendment) Act VI of 1922.
The Court-Fees (Punjab Amendment) Act VII of 1922.
The Indian Stamp (Punjab Amendment) Act VIII of 1922.
The United Provinces District Boards Act X of 1922.
The Indian Income-Tax Act XI of 1922.
The Bombay Cotton Contracts Act XIV of 1922.
The English Finance Act, 1922.
The Central Provinces Court-Fees Act I of 1923.
The Assam Municipal Act I of 1923.
The Indian Stamp (Central Provinces Amendment) Act II of 1923.
The United Provinces Stamp (Amendment) Act V of 1923.
The Punjab Local Option Act V of 1923.
The Bombay Local Boards Act VI of 1923.
The Indian Land Customs Act XIX of 1924.
The English Finance Act, 1924.
The Indian Finance Act XIII of 1925.

(B) *Manuals*—

The Excise Laws of England, 1898.
The Madras Excise Manual, 1907.
The Burma Settlement Manual, 1908.
The Burma Stamp Manual, 1909.
The Manual of the Madras Settlement Department, 1910.
The Bengal Irrigation Manual, 1911.
The Madras Sea Customs Manual, 1911.
The Lower Burma Town and Village Lands Manual, 1913.
The United Provinces Excise Manual, 1914.
The Burma Registration Manual, 1914.
The Burma Irrigation Manual, 1914.
The Punjab Settlement Manual, 1915.
The Bombay Stamp Manual, 1916.
The Bengal Survey and Settlement Manual, 1917.
The Bombay Survey and Settlement Manual, 1917.
The Bihar and Orissa Irrigation Manual, 1917.
The Burma Salt Manual, 1918.
The Bengal Excise and Salt Manual, 1918.
The Bengal Government Estates Manual, 1919.
The Burma Excise Manual, 1920.
The Central Provinces and Berar Excise Manual, 1920.
The Standing Orders of the Board of Revenue, Madras, 1920.
The Madras Stamp Manual, 1921.
The United Provinces Stamp Manual, 1921.

I.—Acts and Manuals—*concld.*

(B) *Manuals*—contd.

The Income-Tax Manual, 1922.

The Bihar and Orissa Excise Manual, 1919—22.

The Burma Sea Customs Manual, 1922.

The Bombay Sea Customs Manual, 1922.

The Punjab Colony Manual, 1922.

The Bombay Salt Manual, 1922.

The Assam Resettlement Manual, 1922.

The Rules and Notifications under the Sea Customs Act, 1878, 1923.

The Madras Customs Tariff Manual, 1924.

The Bombay Excise Manual, 1924.

The Central Provinces Irrigation Manual, 1924.

The Bombay Local Boards Manual, 1925.

II.—Official Publications, Law Reports, etc.—

Minute of Lord Cornwallis on the Permanent Settlement, 1790.

Minutes of Evidence before the Select Committee of the House of Commons on the Affairs of the East India Company, Volume VI, 1832.

Moore's Indian Appeal Cases, Volume I, 1836-37.

Plowden's report on the manufacture and sale of, and tax upon, salt, 1856.

Financial Statements and Proceedings of the Imperial Council for 1860-61, 1867-68, 1868-69, 1871-72, 1877-78, 1886-87, 1888-89, 1903-04, 1904-05, 1905-06, 1907-08, 1916-17, 1917-18, 1918-19, 1919-20, 1920-21, 1922-23, 1923-24 and 1924-25.

Proceedings of the Council of the Governor General of 1860, 1868, 1869, 1877 and 1910; the Budget Debate and Debates in the Imperial Legislative Assembly on Railway Finance, on the introduction of commercial accounts in posts and telegraphs, on the Land Customs Bill and on smuggling in 1924.

The Punjab Legislative Council Debates of November 1924, regarding the new schedule of occupier's rates.

Proceedings of the Madras Legislative Council, dated the 4th March 1924 and the 18th March 1925.

Proceedings of the Burma Legislative Council, Volume III, 1925.

Report of the Royal Army Sanitary Commission, 1863.

Moore's Indian Appeal Cases, Volume XI, 1866-67.

Report of the Parliamentary Committee on East India Finance, Volumes I to IV, 1871-74.

Pedder's Report on the Management of the Salt Department (Bombay), 1872.

Bombay High Court Reports, Volume XII, 1875.

Report of the Madras Salt Commission, 1876.

Report of the Committee appointed to consider proposed changes in the Registration Law, 1879.

Reports of the Indian Famine Commissions, 1881, 1898 and 1901.

Report on Octroi Taxation in the Municipalities of the Bombay Presidency, 1881.

Report of the Bengal Excise Committee, 1884.

Report of the Royal Commission on Opium, 1884.

Queen's Bench Division Cases by Stone, Volume XX, 1888.

Report of the Indian Hemp Drugs Commission, 1893.

II.—Official Publications, Law Reports, etc.—*contd.*

Memorandum on Local Taxation in Bengal, 1894.

System and Practice of Salt Administration in India, 1894.

Resolution on ground-rent policy of the Government of India, Department of Revenue and Agriculture, No. 21-223/12, dated the 7th October 1895.

Report of Mr. Merriman on a visit to the Bombay Salt Factories, 1898.

Report of the Royal Commission on Local Taxation, 1899 (Memoranda regarding classification and incidence of Imperial and Local Taxes).

Final Report of the Royal Commission on Expenditure in India, Volume IV, 1900.

Reports of the Royal Commission on Local Taxation, England and Wales, 1901 and 1903.

Resolution of the Government of India on the Land Revenue Policy, 1902.

Report of the Indian Irrigation Commission, 1901-03.

Report of the Salt Committee, 1904.

Report of the Central Provinces Excise Committee, 1904.

Report of the Indian Excise Committee, 1905-06.

Report of the Assam Labour Committee, 1906.

Report of the Select Committee on the Income-Tax (in England), 1906.

Report of the Bombay Foreign Liquor Committee, 1908-09.

Report of the Municipal Taxation Committee, United Provinces, 1908-09.

Report of the Royal Commission upon Decentralization in India, 1909.

The Madras Law Journal, Volume XXII, 1912.

The Madras Weekly Notes, 1912.

Donald's Municipal Year Book, 1913.

Report of the Select Committee on Patent Medicines (Parliament), 1914.

Report of the Departmental Committee on Local Taxation, England and Wales, 1914.

Resolution of the Government of India, Home Department, dated the 28th April 1915, regarding the Local Self-Government Policy of the Government of India.

Report of the Committee on Local Taxation, Bombay, 1915.

The Calcutta Weekly Notes, Volume XXI, 1916-17.

Report of the Terminal Tax Committee, Rangoon, 1917.

The Madras Law Journal, Volume XXXIII, 1917.

Rapport, Impôt Sur Les Revenues by M. Jacques Louis Dumesnil, No. 3044—Chambre des Députés, 1917.

Notification of the Government of India, Finance Department (Separate Revenue—Stamps), No. 387-F, dated the 14th February 1918.

Report on the Indian Constitutional Reforms, 1918.

Report of the Industrial Commission, 1916-18.

Report of the Financial Relations Committee, 1919.

Report of the Indian Cotton Committee, 1919.

Report of the Joint Select Committee on the Government of India Bill, 1919.

Report of the Committee on Division of Functions, 1919.

Report of the Committee of Enquiry on Taxation of Incomes derived from Farming Operations in South Africa, 1919.

Journals of the Royal Statistical Society, 1919 and 1925.

Mr. Leach's Report on Water-rates in Madras, 1920.

Report of the Coalfields Committee, 1920.

The Devolution Rules of the Government of India, 1920.

Report of the Indian Sugar Committee, 1920.

Report of the Royal Commission on the Income-Tax (in England), 1920.

Report of the Financial Relations Committee, Madras, 1920.

Report of the Committee on Municipal Taxation, Burma, 1921.

Report of the Calcutta Police Rate Committee, 1921.

The Indian Forest Records, Report on Lac and Shellac by Lindsay and Harlow, officers on special duty, Lac Enquiry, 1921.

Report of the Indian Fiscal Commission, 1921-22.

Report of the Madras Water-rate Committee, 1922.

Financial and Economic Annuals of Japan, 1922 and 1924.

Report of the Committee appointed to enquire into the Taxation of the Dominion of New Zealand, 1922.

Wealth, Public Debt and Taxation, 1922. Bureau of the Census, Washington.

Report of the Committee appointed by the Madras Government to report on the question of the law relating to property devolving by succession, 1922.

Report of the Committee appointed to examine the Land Revenue System of Burma, 1922.

Report of the Royal Commission on Taxation in Australia, 1921-23.

Reports of the Inland Revenue Commissioners, 1922-23.

Report of the Indian Retrenchment Committee, 1922-23.

Report of the Bombay Excise Committee, 1922-23.

Bombay Salt Administration Report, 1922-23.

Year Books of Canada and Victoria, 1922-23.

Year Books of Australia and New South Wales, 1923.

Report of the Burma Crime Enquiry Committee, 1923.

Report of the United Provinces Water-rate Committee, 1923.

The Punjab Papers regarding the Volumetric System, 1923.

Report of the Calcutta High Court Retrenchment Committee, 1923.

Report of the Madras Judicial Retrenchment Committee, 1923.

Annual Administration Report of the Travancore State, 1923.

Meyer's Memoranda on Excise (Intoxicating Liquors, Hemp Drugs and Opium), 1923.

Report of the Stock Exchange Enquiry Committee, 1923-24.

Report on the Working of District Boards in the United Provinces of Agra and Oudh, 1922-23 and 1923-24.

Reports on the Operations of the Improvement Trusts, Bombay, Calcutta, Cawnpore, Lucknow and Rangoon, 1923 and 1924.

The Statesman's Year Books, 1923 and 1924.

Reports on the Working of the Development Directorate, Bombay, 1923 and 1924.

Political Science Quarterly, March, 1924.

Statistical Year Book of the Kingdom of Siam, 1924.

Reports of the Indian Tariff Board on the Iron and Steel Industry, 1924.

Annals of the American Academy, 1924.

New Zealand Official Year Book, 1924.

Report of the First Committee of Experts—Dawes' Committee, 1924.

Japan Year Book, 1924-25.

Report of the Indian Coal Committee, 1925.

Report of the Civil Justice Committee, 1925.

Report of an enquiry into the Incidence and Levy of Probate Duty in the Bombay Presidency, 1925.

Reports of the Indian Tariff Board on Sulphur and on the Paper Industry, 1925.

Report of the Indian Economic Enquiry Committee, 1925.

Tariff Schedules for 1925.

The Indian Trade Journal, October, 1925.

The Bombay Major Municipalities Bill, 1925.

The Indian Court-Fees (Amendment) Bill, 1925.

A Bill to consolidate the law applicable to intestate and testamentary succession, 1925.

Annual Administration Reports of the Irrigation Department in the different Provinces, 1904-05 to 1923-24.

Annual Administration Reports of the Northern India Salt Department, 1904-05 to 1923-24.

Annual Administration Reports of the Salt Departments in Madras and Bombay, 1904-05 to 1923-24.

Annual Administration Reports of the Salt Department in Bihar and Orissa, 1914-15 to 1923-24.

Annual Administration Reports of the Income-Tax Department in the different Provinces, 1904-05 to 1923-24.

Annual Administration Reports of the Excise Department in the different Provinces for the years 1904-05 to 1923-24.

Resolutions of Governments reviewing the Working of Local Boards and Municipalities in the several Provinces, 1904-05 to 1924-25.

Reports on the Administration of Civil Justice for all Provinces for the years 1904-05 to 1924-25.

Reports on the Working of the Stamp Departments for all Provinces for the years 1904-05 to 1924-25.

Reports on the Administration of the Registration Departments for all the Provinces for the years 1904-05 to 1924-25.

Land Revenue Administration Reports of the different Provinces from 1913-14 to 1924-25.

Sea-borne Trade Accounts, 1867-68 to 1924-25.

Census Reports for India and the Provinces, 1891, 1901, 1911 and 1921.

Statistical Abstracts for the United Kingdom, 1903—1917.

Statistical Abstract of the United States, 1918.

Finance and Revenue Accounts from the year 1903-04 to 1923-24.

Statistical Abstracts for British India, 1903-04 to 1923-24.

Central Board of Revenue, Income-Tax Returns, 1923 to 1925.

III.—Text Books—

Ab-ul-Fazl	Ain-i-Akbari, Volume II.
Alpe	Law of Stamp Duties.
Alston	Elements of Indian Taxation.
American Academy of Political and Social Science.	Readjustments in Taxation.
Arbuthnot, Sir A. J.	Major-General Sir Thomas Munro, Bart, K.C.B., Governor of Madras (1886).
Armitage-Smith, G.	Principles and Methods of Taxation.
Ashley Percy	Local Government.
Do.	Local and Central Government.
Baden-Powell	The Land Systems of British India (1892), Volumes I—III.
Do.	A Short Account of the Land Revenue and its administration in British India, with a sketch of Land Tenures.
Do.	Village Communities in India.
Banerjea	Public Administration in Ancient India.
Bastable	Public Finance.
Do.	International Trade.
Do.	Commerce of Nations.
Bentham	Theory of Legislation.
Brij Narain	Source Book for the Study of Indian Economic Problems.
Buchanan	A Journey from Madras through the countries of Mysore, Kanara and Malabar.
Bullock	Selected Readings in Public Finance.
Do.	Federal Income-tax (National Tax Association), 1915.
Burnell, A. C., and Hopkins, E. W.	The Ordinances of Manu, Lecture IX.
Calvert	Wealth and Welfare of the Punjab.
Cannan	History of Local Rates in England.
Carstairs	Local Government of Bengal.
Clark	Local Government in the United Kingdom.
Cliff	Imperial Taxation.
Cobden Club Essays	Systems of Land Tenure in various countries.
Curtis, Lionel	Dyarchy.
Dalton	Principles of Public Finance.
Do.	The Inequality of Incomes.
Dawson	Municipal Life and Government in Germany.
Development of the Civil Services	Lectures delivered before the Society of Civil Servants, 1920–21.
Doraiswami Iyengar	Law of Income-tax.
Dutt, R. C.	India in the Victorian Age.
Do.	Open letters to Lord Curzon on Famines and Land Assessments in India (1900).
Edwards	Grant Duff's History of the Mahrattas.
Elphinstone	The History of India (1857).
Encyclopædia Britannica.	Articles on Japan and India.
Erskine	A History of India under Babar and Humayun (1854).
Fawcett	Indian Finance, 1880.
Do.	Manual of Political Economy, 1907.
Field	Landholding and the relation of Landlord and Tenant, second edition, 1885.

III.—Text Books—*contd.*

Firminger	The fifth report from the Select Committee of the House of Commons on East Indian Affairs.
Forrest, G. W.	Selections from the Minutes, etc., of the Hon'ble Mountstuart Elphinstone.
Forrest, H. T. S.	The Indian Municipality.
Galloway	Law and Constitution of India, 1825.
Gleig	The life of Sir Thomas Munro.
Gregory	Tariffs—A study in method.
Grice	National and Local Finance.
Guilhaumon	Guide Pratique des Impôts.
Hamilton	The Federalist.
Han Liang Huang	Land Tax in China.
Harris	Problems of Local Taxation.
Higginbottom	The Gospel and the Plow.
Hobson	Taxation in the New State.
Hunter, Sir W. W.	The Indian Empire.
Ilbert, Sir Courtenay	The Government of India.
Imperial Gazetteer of India.	
Jack	Economic Life of a Bengal Village.
Jagannadha Ayyar	The Stamp Act with notes.
Jensen	Problems of Public Finance.
Jones	The Nature and First Principle of Taxation.
Do.	Taxation yesterday and to-morrow.
Kasturirangachariar, S.	The Indian Stamp Act with case-law thereon.
Keatinge, G.	Rural Economy in the Bombay Deccan.
Keith	Law, Constitution and Administration of the Empire.
Kinney	The Hindu Wills Act.
Do.	Testamentary Succession and Administration of Estates in India.
Do.	The Probate and Administration Act.
Knoop	Principles and Methods of Municipal Trading.
Konstam	Law of income-tax.
Layton	Budget of 1933.
Loveday	The History and Economics of Indian Famines.
Maclean	Standing information of the Madras Presidency.
Mann, Dr. Harold	Land and Labour in a Deccan Village, 1921.
Manu	Dharma Sastra—Lecture IX.
Marme	Village Communities in East and West.
Marshall, Alfred	Elements of Economics of Industry.
Do.	Principles of Economics.
Do.	Industry and Trade.
Mathai, John	Excise and Liquor Control.
McCulloch	Taxation.
McMinn	Famine Truths, Half Truths and Untruths (1902).
Mill, James	The History of British India, 1920.
Mill, J. S.	Principles of Economics.
Moreland	India in the time of Akbar.
Do.	From Akbar to Aurangzeb.
Muir (Ramsay)	The making of British India, 1756–1858 (1915).
Do.	Peers and Bureaucrats.
Mukherjee	Local Government in Ancient India.
Munro, W. B.	Principles and Methods of Municipal Administration.

III.—TEXT BOOKS—*concld.*

Munro, W.B.	The Government of European Cities.
Newton	Federal and Unified Constitutions.
Odgers, Blake	Local Government.
Pagar	The Indian Income-tax.
Pigou	Economics of Welfare.
Do.	Wealth and Welfare.
Plehn	Introduction to Public Finance.
Poincare	How France is governed.
Ramanujachariyar, V. K.	Land Revenue Assessment (1917).
Ratton	A handbook of common salt.
Redlich and Hirst	Local Government in England, Volumes I and II.
Rignano	Pour une Reforme Socialiste du droit Successoral.
Robinson	Public Finance.
Rowntree, B. S.	Land and Labour.
Scott-Montcrieff	Irrigation.
Seligman	Essays in Taxation.
Do.	Income-tax.
Do.	Principles of Economics.
Do.	Incidence of Taxation.
Sewell, Robert	A Forgotten Empire (Vijayanagar), 1900.
Shah, K. T.	Trade, Tariffs and Transport in India.
Do.	Sixty years of Indian Finance.
Shah and Khambata	Wealth and Taxable Capacity of India.
Shah, N. J.	History of Indian Tariffs.
Shaw, Albert	Municipal Government in Continental Europe.
Shirras, Findlay	The Science of Public Finance.
Smith, Adam	The Wealth of Nations.
Smith, Baird	Irrigation.
Snelling	Directory of Income-tax and Super-tax Practice.
Snowden	Labour and National Finance.
Soward	The Death Duty Acts, 1796—1911.
Do.	Law and Practice of Estate Duty.
Soward and Willan	The Taxation of Capital.
Srinivasa Raghavaiyangar	Progress of the Madras Presidency during the last forty years (1893).
Stamp, Sir Josiah	Fundamental Principles of Taxation.
Do.	Current problems in Finance and Government.
Do.	Wealth and Taxable Capacity.
Strachey	Finance and Public Works of India.
Do.	India, its administration and progress, 1911.
Strathie	Excise and Temperance in Madras.
Taussig	Principles of Economics.
Do.	Some aspects of the Tariff question.
Teele, R. P.	Irrigation in the United States of America.
Vakil, C. N.	Financial Developments in Modern India.
Do.	Our Fiscal Policy.
Visvanatha Sastri, A. V.	The Law and Practice of Income-tax.
Visvesvaraya, Sir M.	Reconstructing India.
Webb, Sidney	Grants-in-aid.
Wilks, Lt.-Col. Mark	Historical Sketches of the South of India (1810).
Willan	Foreign Succession Duties.
Wilson, Woodrow	The State.
Wright and Hobhouse	Local Taxation in England and Wales.

APPENDIX XV.

INDEX OF WITNESSES.

(References are to the Evidence and Appendix Volumes.)

SUBJECT INDEX

(The references are to pages in Volumes I and II)

A

D

E

H

I

K

L

M

N

O

V

W