THE RIGHTS AND LIABILITIES OF THE BENGAL RAIYATS

UNDER TENANCY LEGISLATION FROM 1885 TO 1947

by

Lutful Kabir

Thesis presented for the
Degree of Doctor of Philosophy
in the Faculty of Laws

University of London

1965

ProQuest LLC.
789 East Eisenhower Parkway
P.O. Box 1346
Ann Arbor, MI 48106 – 1346

ABSTRACT

The British Administration promised at the time of the Permanent Settlement of 1793 in Bengal, to enact such laws as it might think necessary for the protection and welfare of the raiyats. But it was not until the enactment of the Bengal Tenancy Act, 1885, that fulfilment of that promise was achieved, and the law of landlord and tenant in agricultural land in Bengal was codified. The object of this thesis is to expound the rights and liabilities of the Bengal raiyats as defined in the Act and subsequent legislation up to 1947.

Chapter 1 is introductory: it indicates what rights the raiyats had in land before the commencement of the British Administration in Bengal and explains how the Code of Lord Cornwallis, and subsequent legislation up to 1859, failed to protect their interests against the zemindars. The failure of the Rent Acts of 1859 and 1869 to safeguard their interests is discussed as well as the circumstances leading up to the enactment of the famous Bengal Tenancy Act, 1885.

Chapter 2 deals with the classes of raiyats and the incidents of their tenures. Particular attention is paid to the development of the concept of occupancy right.

Chapter 3 relates to the rights of raiyats given by the Bengal Tenancy Act, 1885 and a comparison is made between

these rights and those occurring under the Rent Acts of 1859 and 1869.

Chapter 4 explains the raiyats' liability for rent and the failure of the attempt to introduce the theory of rent, as propounded by Ricardo and other Western Economists.

Chapter 5 deals with the rules governing payment and suspension of rent and the attempts of the British Administration to prevent zemindars imposing illegal imposts on raiyats.

Chapter 6 deals with the grounds of enhancement and reduction of rent and the procedure by which they were effected.

Chapter 7 explains the various modes of recovery of arrears of rent, and the restrictions imposed on the zemindar seeking to realise arrears.

Chapter 8 deals with the grounds on which a raiyat could have been ejected from his holding and the procedure that followed.

In Chapter 9, the last chapter, the development of the law from the Permanent Settlement, which at first resulted in the enhancement of the zemindar's status and derogation of the status of the raiyat, to his rehabilitation by the Act of 1885 is briefly set out, together with the subsequent change of policy, resulting in the abolition of the zemindar and the vesting of title in the cultivator, holding directly under government, with an occupancy right but subject to a ceiling regarding the extent of his holding.

Acknowledgements

It is my happiest duty to place on record my deep sense of gratitude and thanks to my supervisor, Professor Alan Gledhill, M.A., LL.D., I.C.S.(retd.), retired judge of the Rangoon High Court, not only for his inspiring guidance and stimulating suggestions in preparing this work, but also for the personal and friendly interest he took in my affairs before I arrived in London. His constant supervision during my study at the School of Oriental and African Studies of the University of London and the kindness and patience he has shewn, together with his valuable suggestions, have directly contributed to the present quality of this work.

I acknowledge my debt to the authorities and staff of the School of Oriental and African Studies and the staff of various Libraries in which I have read, for their help and courtesy.

I am especially indebted to Mr.J.Pearson, Librarian of the School of Oriental and African Studies for arranging a separate place for my study within the Library and for affording me every facility I needed.

The help of Miss Pullen, Deputy Secretary, Committee for Commonwealth University Interchange; Miss Thorne, Librarian, India House; Mrs. Brown, Library Assistant of the School of

Oriental and African Studies; Mr.George Ottley, Reference Librarian, State Paper Room of the British Museum; Miss Hopkins, Library Assistant, India Office Library; Mr. Sankey, Librarian, Hon'ble Society of the Middle Temple; Mr. Cocks, Librarian, Hon'ble Society of the Gray's Inn and Miss Fleming, Secretary to Professor Gledhill, is highly appreciated.

I express my thanks to Professor Lang, Warden of the Connaught Hall, University of London, for accommodating me in the Hall for two sessions. My thanks are also due to the staff of the Connaught Hall for taking a keen interest in my welfare during my stay therein.

I take this opportunity to express my gratitude to the authorities of the British Council, Covenantors Educational Trust, Charles Henry Foyle Trust, Sir Ernest Cassel Educational Trust, and Afro-Asian Educational Trust for the financial assistance they so kindly rendered.

It is my melancholy duty to pay my homage to the late Professor Georg Dham, LL.D., Dean of the Faculty of Law, University of Dacca (Professor of Law, University of Kiel, West Germany) who urged me to come to this country and undertake the onerous task of preparing this thesis.

I am indebted to my wife for giving me encouragement to come to this country and especially for her courage in

undergoing a solitude for two years during my absence.

I am much obliged to Mrs.E.W.Garland of the School of Oriental and African Studies for kindly taking the trouble of typing this thesis.

Finally, I thank Mr.Altaf Husain, B.Com.,LL.B., of Lincoln's Inn, Barrister-at-Law, for his help in comparing this work.

Lutful Kabir.

London

October, 1965.

CONTENTS

	Page
Abstract	2
Acknowledgements	4
CHAPTER 1 - Introduction	12-59
CHAPTER 2 - Classes of raiyats	60-181
1. Who are raiyats.	60
Meaning of raiyat.	60
Difference between tenure-holder and raiyat . . .	68
Classification of raiyat	84
2. Raiyats at fixed rates	91
Meaning of raiyats at fixed rates. . .	91
Mode of creation of holding at fixed rates. . . .	105
3. Occupancy raiyats.	106
Meaning of occupancy raiyat.	106
Nature of occupancy right.	106
Who could acquire occupancy right. . .	112
Land in which occupancy right could be acquired . .	146
How occupancy right could be acquired.	170
Extinguishment of occupancy right. . .	175
4. Non-occupancy raiyats.	177
CHAPTER 3 - Rights of raiyats.	182-298
1. Rights of raiyats at fixed rates . . .	182
Right to transfer and succession . . .	182
Right to use land.	185
Right to trees	185
Right to surrender holding	186,233

		Page
	Right to abandon holding	186,245
	Right to make improvements	186,259
	Right to sub-divide holding.	186,267
2.	Rights of occupancy raiyats.	186
	Right to use land.	186
	Right to trees	192
	Devolution of occupancy right.	200
	Right to transfer holding.	203
	Right to sub-let	224
	Right to surrender holding	233
	Right to abandon holding	245
	Right to make improvements	259
	Right to sub-divide holding.	267
3.	Rights of non-occupancy raiyats. . . .	279
	Right of heritability.	280
	Right to sub-let	285
	Right to surrender holding	286
	Right to abandon holding	286
	Right to make improvements	286
4.	Restriction of the raiyats' Contractual rights . .	288
CHAPTER 4 -	Raiyats' liability for rent.	299-374
1.	Definition of rent	299
2.	Liability to pay rent.	313
3.	Rate of Rent	330
4.	Alteration of rent on change of area .	344

Page

CHAPTER 5 - Payment and suspension of raiyats' rent. 375-456

1. Payment of rent. 385

2. Deposit of rent. 394

3. Imposition of abwab. 406

4. Suspension of rent 430

CHAPTER 6 - Enhancement and reduction of raiyats' rent 457-520

1. Enhancement of rent by suit. 457

2. Enhancement of rent by contract. . . 490

3. Reduction of rent. 511

CHAPTER 7 - Recovery of raiyats' arrears of rent . . 521-590

1. Recovery of arrears of rent by rent suit 521

Parties to a rent suit 521

Statutory disability of landlord to recover rent. . . . 521

Position of co-sharer landlord . . . 524

Issues in rent suit. 529

Onus of proof in rent suit 534

Procedure in rent suits. 538

Attachment and sale of a holding for arrears of rent . . . 550

Difference between rent-decree and money-decree. 552

Who could bring a holding to sale for arrears of rent . . . 555

The position of the assignee of arrears of rent and of a rent-decree 562

2. Recovery of arrears of rent by distraint 565

3. Recovery of arrears of rent by certificate 580

	Page
CHAPTER 8 - Raiyats' liability to ejectment. . . .	591-660
1. Ejectment of raiyats holding at fixed rates	591
Grounds of ejectment	591
Position of raiyats at fixed rates on sale of estate or tenure for arrears of revenue or rent . . .	594
2. Ejectment of occupancy raiyats . .	595
Grounds of ejectment	595
Suit by co-sharer landlord	609
Measure of compensation.	611
Loss of right of landlord to eject a raiyat	612
Limitation in ejectment suits. . .	617
Denial of landlord's title - how far a ground for ejectment	626
Remedies for illegal ejectment . .	641
Position of occupancy raiyats on sale of estate or tenure for arrears of revenue or rent.	643
3. Ejectment of non-occupancy raiyats.	644
4. Rights of ejected raiyats.	654
CHAPTER 9 - Conclusion	661-676
Table of Cases	677
Bibliography	698

Page

List of Statutes. 708

Abbreviations 714

Index 716

CHAPTER 1

Introduction

The Bengal raiyats[1] have always been humble folk who live by the sweat of their brows. They are the people who cleared the jungle, brought the land into cultivation and produced the necessaries of life to ensure the survival of the inhabitants of the country. The present aspect of the landscape of Bengal is due to their exertions. They pay the bulk of the revenue. The welfare of the raiyats and the welfare of the country are so much interlinked that it is in the general public interest to enquire into the history of legislation relating to agricultural land in Bengal and set out the steps by which the British Administration sought to define and safeguard the rights of raiyats.

Proprietary rights in land originate with the first occupation. Manu said that "sages pronounce cultivated land to be the property of him who cut away the wood or who cleared and tilled it".[2] There are cogent reasons in

---

1. The cultivating occupant; see infra pp.60-68.
2. A.Phillips, The Law relating to the Land Tenures of Lower Bengal, Tegore Law Lectures - 1874-75 (Calcutta: Thacker, Spink and Co.,1876) p.4; S.C.Mitra, The Land Law of Bengal, Tegore Law Lectures, 1895 (Calcutta Thacker, Spink & Co., 1898)p.2; C.D.Field, Landholding and the Relation of Landlord and Tenant in Various Countries, (Calcutta Thacker, Spink & Co., 1885, 2nd Ed., hereinafter referred to as Landholding) p.419; Thakooranee v. Bisheshur (1865) B.L.R.sup.vol.202 at 247 F.B.

support of the view that, during the reign of the Hindu rulers, the raiyats held land directly from their sovereign[3] and were, in fact, the real proprietors of land[4] and that the sovereign was entitled to a share of the usufruct of the land in the occupation of his subjects,[5] not because he was the owner, but because a share was payable to him in consideration of the protection afforded to their lives, liberty and property.[6] The earlier Hindu Rajas took only one-sixth of the share of the produce of the land[7] but as much as half was taken in later times.[8] It was collected through chieftains or royal officers.[9]

The Muslim Government retained the system established by the Hindu princes with some modifications in detail when carrying it into effect.[10] Under that Government "not only were the old chieftains allowed to remain, and go on collecting and transmitting revenues from the areas under

---

3. The report of the Rent Law Commission,1880, para. 40.
4. Halt Mackenzie's Evidence No. 2575 before the Select Committee of the House of Commons, 1832; A.Phillips, op.cit., p.19; C.D.Field, Landholding, p.419; N.B.E.Baillie, The Land Tax of India (London: Smith, Elder & Co.,1873, 2nd Ed.,)p.xliii; Civilian, A Memoir on the Land Tenure and Principles of Taxation (Calcutta: Samual Smith & Co.,1832) pp.ix,21,27; S.C.Mitra,op.cit.,p.28
5. The report of the Rent Law Commission, 1880, paras. 40 and 41; A.Phillips, op.cit., pp.5, 69; C.D.Field, Landholding, p.418; Thakooranee v. Bisheshur (1865) B.L.R. sup.vol. 202 at 210 - 11 F.B.
6. S.C.Mitra, op.cit., p.7; Civilian, op.cit., pp.VIII, 2, 4, 8 and 21; A.Phillips, op.cit.,p.5; C.D.Field, Introduction to the Regulations of the Bengal Code (Calcutta: S.K.Lahiri & Co., 1912, 2nd Ed., hereinafter referred to as Bengal Code), para. 61.

(cont'd. overleaf)

their control, but further zemindars[11] came into existence between the state and the cultivating raiyats".[12] It is a

---

(cont'd. from previous page)

7. The report of the Land Revenue Commission, Bengal dated 21st March 1940, vol.1, para. 26.
8. The report of the Rent Law Commission, 1880, para. 40.
9. The report of the Land Revenue Commission, Bengal dated 21st March 1940, vol.1, para.21; C.D.Field, Landholding, p.419; A.Phillips, op.cit., p.101.
10. The report of the Rent Law Commission, 1880, para. 40; The report of the Land Revenue Commission, Bengal, dated 21st March 1940, vol.1, para. 21.
11. zemindar = "from zamin, earth, land and dar, holder, keeper; landholder or land-keeper. An officer who, under the Mahomedan Government, was charged with the superintendence of the lands of a district, ... the protection of the cultivators, and the realization of the Government's share of its produce, either in money or in kind; out of which he was allowed a Commission, amounting to ten per cent, and occasionally, a special grant of the Government's share of the produce of the land of a certain number of villages for its subsistence, called nankar. The appointment was occasionally renewed; and as it was generally continued in the same person, so long as he conducted himself to the satisfaction of the ruling power, and even continued to his heirs; so in process of time, and through the decay of that power, and the confusion which ensued, hereditary right (at best prescriptive) was claimed and tacitly acknowledged; till, at length, the zemindars of Bengal in particular, from being the mere superintendents of the land, have been declared the hereditary proprietors of the soil, and the before fluctuating dues of government have, under a permanent settlement, been unalterably fixed in perpetuity" (Glossary to the Fifth Report from the Select Committee of the House of Commons, 1812).
12. The report of the Land Revenue Commission, Bengal, dated 21st March 1940, vol.1., para.21; K.N.R. (A Judical Officer), Article on "Khudkasht ryot of Bengal" published in Calcutta Review of 1883, vol.LXXVII, no.153, p.23.

well known fact that during the reign of Akbar in 1582, his great finance Minister, Raja Todar Mull settled land revenue of Bengal directly with the raiyats.[13] During that time "the state's share was fixed at one-third of the average gross produce. Produce rents were made payable in cash on the basis of investigations into prices carried out over a period of 19 years. Payment in cash was encouraged, and was compulsory, if valuable money crops were grown".[14] The zemindars or the farmers of revenue received 10 per cent of the collections[15] or a portion of the land or its produce for their use and subsistence under the name of nankar exempt from revenue[16] as remunerations for their services. Unless the public revenue on these lands had been remitted by Government as nankar, they would have been required to account for the land revenue of their own fields in common with that which they collected from those occupied by other

---

13. Sir John Shore's Minute dated 18th June, 1789, paras. 10, 11 and 218; A.Phillips, op.cit., p.74; Thakooranee v. Bisheshur (1865) B.L.R. sup.vol.202 at 245 F.B.
14. The report of the Land Revenue Commission, Bengal, dated 21st March, 1940, vol.1, para. 22.
15. Sir John Shore's Minute dated 18th June, 1789, para. 145.
16. Thakooranee v. Bisheshur (1865) B.L.R.sup.vol.202 at 211, 246 F.B.

cultivators.[17]

The Muslim rulers, in course of time, became indifferent to everything connected with the land except the revenue they received from it. They did not trouble to enquire what means the zemindars employed for collecting the rents from the raiyats or how much they collected in excess of the sum they were assessed to pay as revenue. Having taken advantage of their master's inattention, the zemindars exacted the uttermost farthing from the raiyats and so virtually reduced them from the position of allodial proprietors to that of mere tenants at will while they raised themselves from the position of mere tax-gatherers to that of landlords.[18] In the Great Rent Case[19] Trevor J., observed:- 'It is useless to attempt to trace right principles during the last years of Mahomedan rule in Bengal. The only principle of action traceable throughout is a determination on the part of the ruling power to exact, by means of arbitrary imposts, as much rent as possible from the zemindars or farmers of revenue as might be". "The mode of imposition",

---

17. Mr.A.D.Campbell's paper on the Land Revenue of India prepared at the request of the Select Committee of the House of Commons, 1832 = Appendix No. 6 to the said report = British Museum (State Paper Room) vol. No.11 of 1831-32, p.13.
18. The report of the Rent Law Commission, 1880, para. 41.
19. Thakooranee v. Bisheshur (1865) B.L.R. sup.vol.202 at 212 F.B.

remarked Sir John Shore, "was fundamentally ruinous, both to the ryots and zemindars; and its direct tendency was to force the latter into extortion, and all into fraud, concealment and distress".[20] Similarly the Land Revenue Commission, Bengal, observed:- "Their rights had become obscured during the latter part of the Moghul rule by an administration whose ever increasing exactions of revenue were followed by rack-renting of the raiyats".[21]

It was in this state of anarchy and confusion that the English superseded the Muslims in the government of India. From the very beginning of the British administration in Bengal it was the intention of the East India Company to protect the ancient rights of the raiyats. After obtaining the grant of Dewani in 1765, the regulations for the native collectors instructed them that "what can be collected without injury to the raiyats you are to collect and forward to me"; and that enquiries were to be made as to "what further benefits can accrue to the Company without laying the raiyats under hardships, it being the Company's intention that they should enjoy ease and comfort".[22] The letters of instruction

---

20. Sir John Shore's Minute dated 18th June 1789, para. 44.
21. The report dated 21st March, 1940, vol.1, para. 43.
22. Extract from the Proceedings of the President and Select Committee dated 1st October, 1767 quoted by W.W.Hunter in his Introduction to Bengal MS.Records (London: W.H.Allen & Co.Ltd.,1894) hereinafter referred to as Bengal MS. Records) vol.I, p.47.

issued by the Company to its "supervisors", the name given to those first entrusted with powers of rural administration in 1769 contained this specific direction:- "An equally important object of your attention is to fix the amount of what the zemindar receives from the raiyat as his income or emolument; wherein they generally exceed the bounds of moderation, taking advantage of the personal attachment of their people and of the inefficiency of the present restrictions upon them .....you are to convince the raiyats that you will stand between him and the hand of oppression; that you will be his refuge and redresser of his wrongs; that the calamities he has already suffered from sprung from an intermediate course; and were neither known nor permitted by us; that honest and direct applications to you will never fail of producing speedy and equitable decisions; that after supplying the legal due of Government he may be secure in the enjoyment of the remainder; and, finally, to teach him veneration and affection for the humane maxims of our Government.....[23] The raiyats should be impressed in the most forcible and convincing manner that the tendency of your

---

23. Extract from the proceedings of the President and Select Committee dated 16th August, 1769 = J.E.Colebrooke, supplement to the Digest of the Regulations and Laws enacted by the Governor General in Council (Calcutta, 1807) vol.III,p.176; C.D.Field, Landholding, p.464.

measures is to his ease and relief,.... that our object is not increase of rents or accumulation of demands, but solely by fixing such as are legal, explaining and abolishing such as are fraudulent and unauthorised, not only to redress his present grievances, but to secure him from all his further invasions of his property".[24]

The President and Council were not unmindful of the interests of the raiyats when making the quinquennial settlement in 1772. It was provided in section 10 of the Public Regulations for the settlement and collections of Revenue dated 14th May, 1772 that "the farmer shall not receive larger rents from the raiyats than the stipulated amount of the pattas[25] on any pretence whatsoever; and that for every instance of such extortions the farmer on conviction shall be compelled to pay back the sum which he shall have

---

24. J.E.Colebrooke, op.cit., p.179; C.D.Field, Landholding, p.465.
25. Patta = means written lease granted to a raiyat; it expresses the nature and terms of raiyat's holding and the amount of his rent. (C.D.Field, A Digest on the Law of Landlord and Tenant (Calcutta; Bengal Secretariat Press, 1879, hereinafter referred to as "Digest")p.3; Sir John Shore's Minute dated 18th June, 1789, para.228; J.H.Harington, An Elementary Analysis of the Laws and Regulations enacted by the Governor General in Council (Calcutta: Gazette Press, 1817), hereinafter referred to as Analysis) vol.VII,p.422.

so taken from the raiyat, besides a penalty equal to the same amount to the sirkar[26] and for a repitition, or a notorious instance of his oppression on his raiyats, the farmer's lease shall be annulled".[27] When, towards the expiry of the quinquennial settlement in 1777, the land administration was to pass more directly under the Company's control, the Governor General instituted enquiries with a view to "secure to the raiyats the perpetual and undisturbed possession of their lands".[28]

In 1786 Lord Cornwallis arrived in India with instructions from Parliament and the Court of Directors to establish "permanent rules for the establishment and collection of revenue". His first step was to issue a set of interrogatories to the most experienced of the civil servants, who were required to report inter alia about the measures necessary to prevent the raiyats being oppressed and to secure the landLords in the realisation of their just demands, with a view to framing a long term settlement for Bengal.[29] But the reports on that point did not supply enough materials for positive legislation. The Court of Directors in their Revenue General letter dated 19th September, 1792

---

26. Sirkar = Government. (Glossary to the Fifth Report, from the Select Committee of the House of Commons, 1812).
27. J.E.Colebrooke, op.cit., p.191; C.D.Field, Landholding, p.481 f.n.2.
28. Warren Hastings' Minute dated 1st November, 1776, quoted by W.W.Hunter in Bengal MS. Records, vol.I, p.48.
29. W.W.Hunter, Bengal MS. Records, vol.I, p.27.

to Lord Cornwallis declared:-[30] "But as so great a change in habits and situation can only be gradual, the interference of Government may, for a considerable period, be necessary to prevent the landholders from making use of their permanent possession for the purpose of exaction and oppression. We therefore wish to have it distinctly understood that....we disclaim any interference with respect to the situation of the raiyats or the sum paid by them, with any view of an addition of revenue to ourselves; we expressly reserve the right which belongs to us as sovereigns of interposing our authority in making from time to time all such regulations as may be necessary to prevent the raiyats being improperly disturbed in their possession or loaded with unwarrantable exactions.....our interposition, where it is necessary, seems also to be clearly consistent with the practice of the Mogul Government under which it appeared to be a general maxim, that the immediate cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupied. This necessarily supposes that there were some measures and

---

30. J.H.Harington, An Elementary Analysis of the Laws and Regulations enacted by the Governor General in Council (Calcutta: Hon'ble Company's Press, 1814-15, hereinafter referred to as Analysis)vol.II pp.188-89; Selections from Papers relating to Bengal Tenancy Act, 1885, for use of Government Officials (Calcutta: Bengal Secretariat Press, 1920, hereinafter referred to as Selections) pp.11, 115.

limits by which the rent could be defined, and that it was not left to the arbitrary determination of the zemindar; for otherwise such a rule would be nugatory; and in point of fact the original amount seems to have been annually ascertained and fixed by the act of sovereign". Immediately before the Permanent Settlement the Court of Directors again communicated to the Government of India that they would interfere from time to time, if necessary, for the protection of the raiyats and subordinate landholders, being the guardians and protectors of every class of persons living under their Government.[31] The Court of Directors also considered whether they should fix the raiyat's rent in perpetuity. On the point they wrote:-[32] "It is an object of perpetual settlement that it should secure to the greatest body of the raiyats the same equity and certainty as to the amount of their rents, and the same undisturbed enjoyment of the fruits of their industry which we mean to give to the zemindars themselves".

In conformity with the instructions of the Court of Directors, the Decennial Settlement, concluded in 1790,

---

31. J.H.Harington, Analysis, vol.II, pp.191-92; Selections, pp.12, 115, 194.
32. Despatch from the Court of Directors dated 19th September, 1792, quoted in the Report of the Land Revenue Commission, Bengal dated 21st March, 1940, vol.I, para.37; W.W.Hunter, Bengal MS. Records, vol.p.116.

was made permanent in 1793. By section 7 of the Permanent Settlement Regulation I of 1793, the zemindars were required "to conduct themselves with good faith and moderation towards the dependent talukdars[33] and raiyats". In section 8 of the same Regulation, it was declared: "It being the duty of the ruling power to protect all classes of people, and more particularly those who from their situation, are most helpless, the Governor General in Council will, whenever he may deem it proper, enact such Regulations as he may think necessary for the protection and welfare of the dependent talukdars and raiyats and other cultivators of the soil". And finally by section 67 of the Decennial Settlement Regulation VIII of 1793, it was enacted that proprietors should be bound by the restrictions in their kabuliats,[34] the ninth clause of which was that, "implicit obedience be shown to all regulations which have been or may be prescribed by Government concerning the rents of the raiyats and the collections from under-tenants and agents of every description as well as from all other persons whatever".

By the Permanent Settlement the zemindars were

---

33. talukdar = holder of a taluk (tenure).
34. Kabuliat = Counterpart of a lease or patta which counterpart is executed by the tenant in favour of his landlord (C.D.Field, Digest, p.3; C.D.Field, Landholding, p.566 f.n.)

declared, in opposition to the established custom of the country, to be the actual proprietors of the soil and the revenue payable by them to the Government was fixed for ever. The settlement was concluded without consideration of the "Permanent Plan for the Ease and Security of the Raiyats"[35] methodically designed by Sir John Shore and without any adequate provision for the protection of the class of persons who were the real proprietors of the soil, and who deserved the largest amount of protection from the hands of Government.[36] The only exception to the general policy of leaving existing rights to be safeguarded by custom was made in the case of raiyats who prior to the settlement held at fixed rates of rent by contract. Their rents were declared to be fixed in perpetuity if they had held at a fixed rate for 12 years, or in cases where they had held for less than 12 years, if they had a contract with the zemindars.[37]

Lord Cornwallis believed that under that settlement he was giving the raiyats, the same right to hold his fields for ever at a fixed rent as he was giving to the zemindar

---

35. J.H.Harington, Analysis, vol.III, p.457; W.W.Hunter, Bengal MS. Records, vol.I, p.69.
36. The Bengal Administration Report, 1911-12, para. 160.
37. The Bengal Decennial Settlement Regulation VIII of 1793, sec. 49; The report of the Land Revenue Commission, Bengal, dated 21st March, 1940, vol.I, para. 40.

to hold his estate for ever at a fixed land tax. He was sanguine that if the zemindars were made proprietors subject to the payment of a fixed revenue or land tax, they would, of themselves and for their own interest, adjust the relations between them and their raiyats on a satisfactory footing, and that it would be enough to retain the right of interference, should it be necessary. But he was mistaken. The safeguards by which Lord Cornwallis hoped to protect the interest of the raiyats were two in number. The first was the statutory provision for the delivery of pattas to the raiyats and the other was the maintenance of the accounts of the raiyats by the village patwari;[38] it was assumed that these would be sufficient to ensure the permanency of each raiyat's possession of a certain area of land on certain specific conditions and at specific rates of rent.

Regarding the first safeguard, the right of the raiyats to receive pattas was declared by section 59 of the Bengal Decennial Settlement Regulation VIII of 1793. Section 54 of the same Regulation directed that all existing

---

38. Patwari = village accountant; he occupied the lower grade in the local agency and performed the duties of a village accountant. He was required to keep accounts relating to lands, produce, collections and charges. (The Bengal Administration Report 1892-93, p.76; C.D.Field, Landholding, p.551).

abwab[39] should be consolidated with the asal (original) rent. By section 55 the imposition of any new abwab was prohibited. The form of patta, prepared in accordance with the rules and adapted to the circumstances of the particular estate, was to be submitted to the collector for his approval and, when so approved, a copy of it was to be registered in the Dewani Adalat (civil Court) of of the zillah (district) and a copy was to be deposited in each of the principal cutcharies (offices) of the particular estate.[40] By another Regulation[41] it was provided that no landlord should grant pattas to raiyats or other persons for the cultivation of land for a term exceeding ten years. It was also directed that they should not be cancelled except upon a general measurement of the pargana[42] for the purpose of equalising and correcting the assessment, or upon proof that the pattas had been obtained in collusion, or that the rents paid within the last three years, had been reduced below that recorded in the nirikbandi[43] of the

---

39. 'abwab' is the plural of bab, a head, an item and means items or miscellaneous items i.e., taxation (C.D.Field, Landholding, p.445 f.n.6; E.H.Whinfield, The Law of Landlord and Tenant (Calcutta: Wyman & Co., 1869) p.75.
40. The Bengal Decennial Settlement Regulation VIII of 1793, sec.58.
41. Regulation 44 of 1793, sec.2.
42. Pargana = a small district consisting of several villages (Glossary to the Fifth report from the Select Committee of the House of Commons, 1812).
43. nirikbandi = the record exhibiting the nirk (rate). Ibid.,

pargana or the pargana rate.[44]

But the rules for the exchange of pattas and kabuliats proved inoperative as it was opposed to the interest of both the landlords and the raiyats. The zemindars began to evade the duty to tender pattas. Those who obeyed the letter of the law, by preparing and tendering pattas, inserted in them such exhorbitant rates that the raiyats, as a matter of course, refused to accept them. Even if the rates were supposed to be unobjectionable, the khoodkasht[45] or other raiyats, who claimed a prescriptive right of occupancy, would not accept the pattas, the term of which was limited to ten years, and which, therefore, suggested the inference that, on the expiry of this term, they could be evicted.[46] As to the cause of failure of the patta plan there are abundant contemporaneous expositions.[47]

---

44. The Bengal Decennial Settlement Regulation VIII of 1793, sec. 60(2).
45. Khoodkasht from Persian khood, own and kasht cultivation (M.Finucane and Ameer Ali, A Commentary on the Bengal Tenancy Act (Calcutta: The Cranenburgh Law Publishing Press, 1911, 2nd Ed.,)p.4; N.B.E.Baillie, op.cit.,p.xlii; C.D.Field, Bengal Code, p.31 f.n.2; C.D.Field, Landholding, p.423 f.n.7; E.H.Whinfield, op.cit., p.15; A.Phillip,op.cit. p.12; Thakooranee v. Bisheshur (1865) B.L.R.sup.vol.202 at 319 F.B.
46. C.D.Field, Landholding, p.564; The report of the Land Revenue Commission, Bengal dated 21st March, 1940, vol.I, para.49; The Bengal Administration report 1911-12, para.161
47. Sir John Shore's Minute dated 18th June, 1789, para.241; Letter of the Collector of Rajshahi dated 16th August, 1811, para.11 to the Board of Revenue, quoted by C.D.Field in his Landholding, p.565-66; W.W.Hunter, Bengal MS.Records vol.I, p.130; Lord Moira's Minute dated 21st September, 1815, paras. 143 and 144 = Appendix No.9 to the Report from the Select Committee of the House of Commons, 1832.

Regarding the second safeguard contemplated by Lord Cornwallis i.e., the maintenance of the accounts of the raiyats by the village patwari, while the office of the kanango,[48] or district registrar paid by the state, was abolished on the introduction of the Permanent Settlement,[49] position of the patwaris or village registrar underwent a more dangerous change. "Until 1793 they were the servants of the village community, paid partly by small grants of land from the Government, and partly by allowances from the body of resident cultivators. They were, therefore, joint servants of the state and of the village community,

---

48. 'kanango' = from kanun = laws and go = to speak. Under the Muslim rule in India he was appointed by Government; his function was to keep the public accounts and to recieve the returns and registers of the zemindars and other local officers who collected the public revenue. Kanango was appointed for each estate or pargana and was required to compile information regarding articles of produce, rates of rent, transfers of holdings, rules and customs established in each pargana, and to assist in measurements of lands. The Kanangos were district registrars; the patwaris were official village accountants. Both these classes of officials were intended to serve as a check on the landlords. (The Bengal Administration report 1892-93, p.76; C.D.Field, Landholding, pp.552,592).
49. The Bengal Administration report, 1892-93, p.76.

the depositories of the local usages of the country, from whom it was always easy for the revenue officers of Government to collect information regarding individual rights of the raiyats, in cases of dispute between them and the zemindars or farmers. Under the Permanent Settlement, these hereditary guardians of the rights of cultivators were suddenly transformed into the servants of the landlords. 'By Regulation VIII of 1793'[50], wrote the Court of Directors, in recapitulating this extraordinary transaction, 'every zemindar, who had not established a patwari in each village within his estate to keep the accounts of the raiyats, ... was immediately to appoint one in each village, unless in such instances as the Board of Revenue might deem it unnecessary to have a separate one for each village'. The registrars of these reformed patwaris were to furnish not only the basis of the ordinary rent-transactions, but also evidence 'to facilitate the decision of suits in the courts of judicature between proprietors and farmers of land, and persons paying rent or revenue to them. The more experienced administrators, represented by John Shore, had intended these patwaris to be a new class of registrars, maintained at the cost of the zemindar, a class who would take the place to some extent of the state-paid agency of kanangos

---

50. Sec. 62(2).

abolished by the Permanent Settlement. But unfortunately for the Bengal cultivators, John Shore left Bengal in the very crisis of their fate. Before he returned as Governor-General the mischief had been done. The landlords, supported by the Regulation of 1793, gradually turned the village patwaris who had been the joint servants of the Government and the village community, into zemindari servants, working under the orders of the zemindar, and often in his own kacheri or land office. The effect was to change the public and impartial village record of rights, by which the cultivators had held their fields, into a private and hostile record under the control of the landholders".[51]

"In 1815 the court of Directors took up the matter afresh, and directed the introduction of measures by which the patwaris should be transformed from zemindari to Government servants, and be paid from public funds. Objections, however, were raised, and the scheme fell through. The patwaris remained as they were, but it was determined to appoint kanangos to supervise them, and make their accounts available for reference by the courts and the revenue officers of Government.[51a] Regulations regarding patwaris and kanangos were passed in 1817, 18, 19, and Regulation 1 of the latter

51. W.W.Hunter, Bengal MS. Records, vol.I, pp.119-21; The Bengal Administration Report 1892-93, p.76.

51a. Bengal Patwaris Regulation XII of 1817; Kanangos Regulation I of 1818; Kanangos and Patwaris Regulation I of 1819; Land Revenue Assessment Regulation II of 1819, SS.9,11,12.

year provided for the re-establishment of kanangos, and defined the position and duties of patwaris; and throughout Bengal, with the exception of some few districts, kanangos were appointed. Success, however, does not appear to have attended even these measures. The Bengal revenue authorities were opposed to the arrangement. In 1827 the Board reported that the kanangos had effected but little towards the main object of their appointment, and that their action met with systematic and determined opposition from the landholders, who in most cases failed to appoint patwaris, or when they did appoint them, refused to pay their allowances, dismissed them without warning, and did not allow them access to their real records. The Board of Revenue gave no support to the system and though the Government of India never conceded the point, the passive resistance of the landholders had the effect of defeating all action until kanangos dropped out everywhere save in Orissa; and patwaris were discouraged, as far as possible extinguished".[52]

In the event Lord Cornwallis' plan totally failed; his benevolent intention was frustrated. Millions of people, for whose happiness and well being the Permanent Settlement was concluded, were left at the mercy of the zemindars.[53] It was adequately proved at the time of that

---

52. The Bengal Administration report 1892-93, p.76.
53. Lord Moira's Minute dated 21st September, 1815, para.143.

settlement that the raiyats had rights in land[54] but the code of Lord Cornwallis failed to protect those rights. The zemindars abused their powers, oppressing the raiyats and subjecting them to unlimited exactions, to prevent which the code made no adequate provision.

"Never", said Lord Hastings, "was there a measure conceived in a purer spirit of generous humanity and disinterested justice, than the plan for the Permanent Settlement in the Lower provinces. It was worthy the soul of a Cornwallis. Yet this truly benevolent purpose, fashioned with great care and deliberation, has to our painful knowledge, subjected almost the whole of the lower classes throughout these provinces to utmost grievous oppression; an oppression too, so guaranteed by our pledge, that we are unable to relieve the sufferers".[55] An opinion not less strong was recorded at the same time by Sir E. Colebrooke, then a member of the Supreme Council, who

---

54. Despatch to the Secretary of State No.6 dated 21st March, 1882, para. 46 = Selections, p.12; The report of the Rent Law Commission, 1880, para. 43; The speech of the President of the Supreme Council dated 13th March, 1883 = Selections, p.142; Directions for Revenue Officers in the North Western Provinces of the Bengal Presidency (Calcutta: Baptist Mission Press, 1850) para.108.
55. Minute of the Governor-General dated 31st December, 1819 = Appendix No. 76 to the Report from the Select Committee of the House of Commons, 1832; also quoted in the said report.

observed that "the errors of Permanent Settlement were two-fold; first, in the sacrifice of what might be denominated the yeomanry, by merging all tillage rights, whether of property or of occupancy, in the all-devouring recognition of the zemindar's permanent property in the soil; and then leaving the zemindar to make his settlement with the peasantry as he might choose to require".[56]

The Select Committee of the House of Commons that sat in 1830 reported, after a laborious investigation for two years, that "a great body of evidence has been taken on the nature, object and consequences of this Permanent zemindary settlement, and your Committee can not refrain from observing that it does not appear to have answered the purposes for which it was benevolently intended by its author, Lord Cornwallis in 1792-93". "The causes of this failure", continued the Select Committee, "may be ascribed, in a great degree, to the error of assuming, at the time of making the Permanent Settlement, that the rights of all parties claiming an interest in the land were sufficiently established by usage to enable the courts to protect individual rights; and still more to the measure which declared the zemindar to be the hereditary owner of the soil, whereas it is contended that he was originally, with

---

56. Quoted in the report from the Select Committee of the House of Commons, 1832.

few exceptions, the mere hereditary steward, representative or officer of the Government, and his undeniable hereditary property in the Land Revenue was totally distinct from property in the land itself".

Similarly, our Civilian, Mr.Halhed, a distinguished member of the Bengal Civil Service under the East India Company, observed: "The zemindars, who, it is abundantly shown in the evidence laid before a Committee of the House of Commons, in 1772, were merely the agents through whom the revenues were realised, and not the proprietors of the soil.[57] But unfortunately the just claims of the raiyats were altogether forgotten in settling the question of proprietary right, and strange to say - without evidence, without proof, - without investigation, the British legislature have delivered over, as tenants-at-will, millions of free proprietors, to the tender mercies of a race of tax-gatherers and speculators, who though not possessing a foot of land, have been, by a stroke of the pen converted into exclusive proprietors and seignorial lords of the Bengal provinces.[58] So far from the Permanent Settlement being the work of the Company's officers, it

---

57. Civilian, op.cit., p.iv.
58. Ibid., p.vi.

is well known, that it originated with certain members of the administration in England, the code prescribing the course of fiscal management to be adopted, was drafted in England, and was brought out by Lord Cornwallis to Bengal. By the provisions of this code, the rights, privileges, and interests of the whole agricultural community of the Bengal provinces were annihilated, while the Company's judicial officers who were all sworn to decide according to its dictates, were compelled to apply the whole force and power of the Courts of Law in aid of the work".[59] The Finance Committee at Calcutta in their report of 12th July, 1830 acknowledged that "in a permanently settled districts in Bengal, nothing is settled and little is known but the Government assessment",[60]

Mr. Campbell, a distinguished member of the Madras Civil Service, in his able paper prepared at the request of the Select Committee of the House of Commons, 1832, remarked that "the field, which he (zemindar) held in his distinct capacity, as a cultivator, were never, in the slightest degree confounded by the native government with his official contract, or zemindary tenure". This distinction between the right of the cultivator to the soil itself and

---

59. Ibid., p.ix-x.
60. Quoted in the report from the Select Committee of the House of Commons., 1832.

the right of the zemindar to the receipt of the land revenue from the cultivator, is, in Mr.Campbell's opinion, of great importance. "For", he added, "simple as this distinction now appears to be, to all who have waded through the vast mass of information how procurable, it is the want of a clear perception of these two very distinct rights, which has given rise to the chief errors, committed at the period of the permanent zemindary settlement". The Government, "by law, attributed to the zemindar a property, not in the Land Revenue alone, nor even in the few fields which he occupied himself as a cultivator, hut in every field throughout his zemindary, though occupied by, and belonging to, others (raiyats)".[61]

The legislation following the Permanent Settlement added to the rigours of the situation in which the raiyats were placed. Section 5 of Regulation 4 of 1794 empowered the zemindars to recover rent from the raiyats at the rates offered in the pattas, whether they agreed or not, for it was provided that a notification of readiness to grant pattas at the established rates in the office of the zemindars would be considered as legal tender of pattas and the zemindars would be entitled to recover rents from the raiyats at the rates offered either by the process of

---

61. Mr.A.D.Campbell's paper on the Land Revenue of India.

distraint or by suit in the Civil Court. "Thus the zemindars", said Field, "were enabled to claim any rates they pleased, to distrain for rent at these rates, and to put upon the raiyats, the onus of proving that the rates so claimed were not the established rates".[62]

A constant struggle was thus kept up between the parties. The raiyat refused to pay his rent, and the zemindar had no legal means of enforcing payment from him with the same rigid punctuality insisted upon by the collector in payment of the Government revenue. The result was a widespread default in the payment of the Government dues and the sale of a large number of estates.[63]

This circumstance caused the East India Company, which had to pay its dividends and to meet the expenses of the great war with Tipu sultan, in which Lord Wellesley was then engaged, some alarm for the security of the revenue, and the Government, pressed by want of money, agreed to strengthen the hands of those on whom it immediately depended for its punctual payment.[64] The notorious Haftam[65] or

---

62. C.D.Field, Landholding, p.564.
63. The Bengal Administration Report, 1911-12, para. 161.
64. Ibid., para. 162.
65. 'haftam' (Persian) = seven (the number of the Regulation).

Regulation VII of 1799, was, therefore, enacted "for enabling proprietors and farmers of land to realise their rents with greater punctuality".[66] This Regulation gave the landlords a practically unrestricted right of distraint, and in certain cases to arrest raiyats for arrears of rent, without reference to any court.[67] They were empowered "to distrain, without sending any notice to any court of justice or any public officer, the crops and products of the earth of every description, the grain, cattle, and other personal property, whether found in the house or on the premises of any other person".[68] To make matters worse, Magistrates were required to punish, by fine or imprisonment, raiyats who could not establish the truthfulness of complaints of hardship brought by them against landlords, or their distraining agents, and the civil courts were directed to indemnify zemindari officers, or others employed in the collections, when improperly summoned.[69] That regulation was not meant "to define or limit the actual rights of any description of landholders or tenants, which could properly be ascertained and determined by judicial investigation only, but merely to point out in what manner defaulting tenants should be proceeded against in the event of their

66. Regulation VII, of 1799, preamble.
67. Ibid., sec. 15(1).
68. Regulation XVII of 1793, sec. 2.
69. Regulation VII of 1799, sec.12.

not paying the rents justly due from them, leaving them to recover their rights, if infringed, with full costs and damages in the established courts of justice".[70] "These last provisions", remarked Field, "scarcely require comment. There is scarcely a country in the civilized world, in which a landlord is allowed to evict his tenant without having recourse to the regular tribunals, but the Bengal *zemindar* was deliberately told by the legislature that he was at liberty to oust his tenants, if the rents claimed by him were in arrear at the end of the year, leaving them to recover their rights, if infringed, by having recourse to those new and untried Courts of Justice, the failure in which might be punished with fine or imprisonment".[71] According to Sir Antony McDonnell the result of the Regulation 7 of 1799 was that, in 12 years, the ancient rights of the *raiyats* were on the verge of obliteration.[72]

There was, however, no intention to abrogate the rights of the *raiyats* by Regulation 7 of 1799; and when, during Lord Minto's administration, the evil effects of the Regulation became known, there was a strong revulsion of official feeling, which produced the Bengal Land Revenue Sales Regulation 5 of 1812 (the *Panjam*), whereby it was hoped to correct the

70. *Ibid.*, sec.15(7).
71. C.D.Field, *Landholding*, p.581.
72. Sir Antony McDonnell's Minute dated 20th September, 1893, para.17 = Supplement to the Calcutta Gazette dated 25th October, 1893. p.1987.
73. *Panjam* (Persian) = five.

bad effects of Regulation 7 of 1799. The preamble to that Regulation is somewhat in the nature of an indictment against zemindars. There were grounds, it was said, for believing that they had abused their powers, and had been guilty of acts of oppression in connection with the distraint and sale of the property of their tenants. Therefore, the power of arrest was abolished and the law of distraint amended. It was, enacted that zemindars were bound to serve their tenants with a written demand, specifying the precise amount of their arrears; the demand upon the tenant was made a condition precedent to the distraint of the defaulter's property.[74] Ploughs, implements of husbandry and cattle used for agriculture were absolutely exempted from distress and sale.[75] By way of relief or compensation, the tenant, if he disputed the justice of the demand, was enabled to get the attachment released by making an application within five days and binding himself to institute a civil suit to contest the distraint and attachment within another 15 days.[76] But it was pointed out in para. 163 of the Bengal Administration Report 1911-12 that "this provision was clogged with formalities, and in practice, was inoperative. The defaulting tenant had to execute a

74. The Bengal Land Revenue Sales Regulation V of 1812, sec.13.
75. Ibid., sec.14.
76. Ibid., sec.15.

bond, with a surety, before either a Commissioner, a Judge, a Collector, or the kazi (judge) of the pargana, that he would speedily institute his suit and a civil suit, in those days involved much trouble, a good deal of time, and no inconsiderable outlay. If the suit was not instituted within the prescribed time, the attachment revived against the person and the property of the defaulter who had given sureties for his action and the property of the unfortunate surety became liable for the arrears of rent, if no suit was brought". That Regulation, however, removed the ceiling of ten years on the duration of leases.[77]

The Court of Directors, in their despatch of the 15th January, 1819, admitted the failure of the existing Regulations to protect the raiyats. It is curious that in that very year legislative recognition was given to a tenure, known as patni taluk[78] which had it origin in the estates of the Raja of Burdwan, and was thence extended to other zemindaries. The main character of that tenure was that it was a taluk created by the zemindar to be held at a rent fixed in perpetuity by the lessee and his heirs for ever.[79]

---

77. The Bengal Land Revenue Sales Regulation V of 1812, sec.2.
78. Patni taluk = patni from pattan, settled; taluk = a tenure.
79. The Bengal Patni Taluk Regulation VIII of 1819, sec.1.

The effect of the sale of a patni taluk was made similar to that of a revenue-paying estate, inasmuch as all leases granted and incumbrances created by the defaulting tenant were voidable by the purchaser,[80] who was entitled to have the taluk in the same condition as on its original creation. It became the common practice of the holder of patni taluks to under-let on the same terms as he held to other persons, who were called darpatni talukdars.[81] [82] They similarly sub-let to sepatnidars[83] and the process of sub-letting in very many instances continued for several degrees, so that in some places there were as many as a dozen gradations between the zemindar at the top and the cultivator of the soil at the bottom.[84] It is easy to conceive how landlords of this class abused the extraordinary powers with which the legislature invested them and ground down the toiling millions of the country.[85] In fact the cultivators in patni taluks were handed over en masse to the intermediaries, whose one object was to wring a profit out of them.[86] "The sub-letting system", wrote Mr. Dampier, the Superintendent of Police for Bengal in 1843, "which relieves the zemindars

---

80. Ibid., sec.11.
81. 'darpatni' = dar means under; darpatni was a tenure under a patni taluk.
82. The Bengal Patni Taluk Regulation VIII of 1819, sec.1.
83. sepatnidar = a tenure holder under a darpatni (Ibid.,).
84. C.D.Field, Landholding, p.619.
85. Ibid.,
86. W.W.Hunter, Bengal MS. Records, vol.I, p.103.

from all connection with their estates or raiyat, and places these in the hands of middlemen and speculators, is striking its roots all over the country, and is grinding down the poorer classes to a bare subsistence, if it leaves them that".[87] Field observed that "this system of sub-letting of quasi-sub-infeudation was distinctly legalised by the legislature; and the consequence has been that at the time when middlemen were being abolished in Ireland, they were being created and their creation encouraged in Bengal".[88]

In a despatch of the 1st August, 1822 the Government of India proposed to the Court of Directors that a survey and record of rights of the permanently settled districts of Bengal should be made, this being the only means of defining and maintaining the rights of raiyats. While approving this proposal, the Court of Directors in reply in their despatch wrote:- "It is in the highest degree important that your design of adjusting the rights and interests of the raiyats in the villages as perfectly in the Lower as in the Upper provinces should be carried into effect .... we shall have the greatest satisfaction in receiving the result of your deliberation upon this subject, and shall be ready most zealously to co-operate with you for the speedy accomplishment of so desireable an end ....

87. Quoted by C.D.Field in his Landholding p.620.
88. Ibid., p.618-19.

should you succeed in securing to the raiyats those rights, which it was assuredly the intention of the Permanent Settlement arrangements to preserve and maintain; and should you, in all cases where the nature and extent of those rights can not be now satisfactorily ascertained and fixed, provide such a limit to the demand upon the raiyats as fully to leave to them the cultivators' profits under leases of considerable length, we should hope that the interests of that great body of the agricultural community may be satisfactorily secured".[89]

That proposal was, however, never carried out. While the correspondence relating to it was proceeding, fresh legislation, which again proved injurious to the raiyats, was enacted. The /Indemnity Regulation XI of 1822, relating to the sale of land for arrears of revenue, like the Haftam, intended to enable the zemindars to realise their rents and then discharge the Government revenue, really placed them in a position of abnormal superiority to their raiyats. That Regulation gave powers to the purchaser of estates sold for arrears of revenue to evict all tenants, with the exception of khoodkasht kadimi[90] raiyats or resident or hereditary cultivators, having a prescriptive

---

89. Revenue letter to Bengal dated 10th November, 1824, paras. 33 and 34 = Appendix No. 15 to the report from the Select Committee of the House of Commons, 1832.
90. Kadimi = hereditary, ancient (E.H.Whinfield, op.cit., p.16).

right of occupancy, who were not to be ejected,[91] though their rents might, under certain circumstances, be enhanced after service of notice.[92] The term khoodkasht kadimi raiyats was not defined in the Regulation but it was construed to mean the khoodkasht raiyats who had been in possession of their lands for more than 12 years before the decennial settlement.[93] Trevor J. observed that the use of this term in the Regulation of 1822 "to designate the cultivator, who would not be liable to eviction on a sale for arrears of revenue, gave rise to the doctrine, that khudkasht ryots who had their origin subsequent to the settlement were liable to eviction, though, if not evicted, they, under section 33, could only be called upon to pay rents determined according to the law and usages of the country; and also, that the possession of all ryots, whose title commenced subsequent to the settlement, was simply a permissive one, that is, one retained with the consent of the landlord".[94] "The establishment of this principle as the law of the land", observed Field, "practically left the zemindars free to enhance the rents of all but a small class of raiyats up to any point that competition would

---

91. The Bengal Government Indemnity Regulation XI of 1822, sec.32.
92. Ibid., sec.33.
93. Thakooranee v. Bisheshur (1865) B.L.R.sup.vol. 202 at 215 F.B.
94. Ibid., p.219.

raise them; because, although the provisions of the Regulation applied directly to those estates only which had fallen into arrears of revenue and had in consequence been sold, the principle once established was extended by the power of the zemindars to other estates also. Quite apart from their power, the raising of rents in one place tended to create a higher prevailing rate, which could by the law be imposed upon the tenants of estates, which had not been the subject of a revenue sale. Moreover these tenants well knew that, if they resisted, the zemindar would accomplish his purpose by allowing the estate to fall into arrears and be sold, purchasing it in the name of a relation or dependent".[95]

The Indemnity Regulation XI of 1822 remained in force for 19 years up till 1841, when it was repealed by the Bengal Land Revenue Sales Act XII of that year, which empowered the auction purchaser to enhance at discretion the rents of all under-tenures in the estate and to eject all tenants thereof, except (among others) khoodkasht or kadimi raiyats having rights of occupancy at fixed rents or rents assessable according to fixed rules under the Regulations in force.[96] "The power to enhance at discretion the rents of all tenants other than those falling within these exceptions, given by this act to purchasers at sales, afforded them the amplest power of

95. C.D.Field, Landholding, p.665.
96. The Bengal Land Revenue Sales Act XII of 1841, sec.27.

exacting rack-rents from the raiyats".[97] The Act of 1841 was repealed by Act I of 1845 which, however, re-enacted the same provisions. The latter Act remained in force for 14 years, until it was repealed in 1859.

Thus, up to the middle of the last century, the zemindars exercised an authority over the raiyats far greater than that given to them by the original settlement of 1793. All legislation of that period dealing with landlord and tenant, had one primary object, viz., the security of the public revenue, and each successive Regulation served only to amplify the powers of those who were obliged to remit to Government the revenue, so as to enable them to realise their demands without delay whether right or wrong.[98] "Under the Haftam process", as has been well observed, "the person of the raiyat could be seized in default; under the panjam process his property could be distrained, and in either case the proceedings commenced with what has been described as a strong presumption equivalent to a knock-down blow against the raiyat".[99] Remedies were no doubt provided in every Regulation for redress against any injustice by referring discontented parties to the Civil Court; but, constituted as the Civil

---

97. C.D.Field, Landholding, p.667.
98. The Bengal Administration report 1911-12, para. 164.
99. The Bengal Administration Report, 1872-73, p.81.

Courts then were; the raiyats were left without adequate means of relief for the most manifest extortions.[1] As regards the effects of Revenue Sale Laws on the raiyats Field remarked:- "It will appear that the legislation by which the Government thought necessary to support the zemindars from 1799 to 1859 with a view to enabling them to realise their rents and so discharge the Government revenue, placed them in a position of abnormal superiority detrimental to the rights and interests of the raiyats. The insecurity of tenure, the mischievous power of annoyance, interference and extortion, which these laws have given to auction purchaser, have been fatal obstacles to agricultura improvement, and have proved at once the source and instrument of oppression and wrong".[2] Similarly in the Great Rent Case[3] Trevor J. observed:- "These laws distincly gave the purchaser the power to eject a khudkasht ryot, whose tenure was created after the Permanent Settlement, and, if not ejected, they were liable to be assessed at the discretion of the landlord. The word 'discretion' entirely annihilated the rights of the khudkasht tenants created subsequent to the settlement in estates sold under

1. The Bengal Administration Report 1911-12, para. 164.
2. C.D.Field, Landholding, p.669.
3. Thakooranee v. Bisheshur (1865) B.L.R. sup.vol. 202 at 219 F.B.

these laws. It reduced them from tenants with rights of occupancy, so long as they paid the established rate of the pargana or the rate which similar lands paid in the places adjacent, into mere tenants-at-will of the zemindar, who might in any year eject them, and place in their stead any tenant competing for the land. It is , in short, introducing into this country competition in the place of customary rents".

To sum up, the condition of the raiyats upto 1859 was not a happy one; they were in a "train of annihilation".[4] In 1827 Mr. Leycester, the senior judge of the Saddar Dewani Adalat, while reviewing a draft regulation proposed by Harington for the protection of the raiyats, recorded that "in many parts of the country the resident cultivators are the actual slaves of the landholders and liable to be mortgaged, bartered or let to hire, the same as his oxen and his goats, at his will and pleasure".[5] Though it was categorically declared in section 8 of the Permanent Settlement Regulation I of 1793 that "it being the duty

---

4. Despatch to the Secretary of State No. 6 dated 21st March, 1882, para. 106 = Selections, p.32.
5. Revenue Consulations No. 5 dated 8th March, 1827 = Appendix No. 21 to the Report from the Select Committee of the House of Commons, 1832; Despatch to the Secretary of State No. 6 dated 21st March, 1882 = Selections, p.32; also quoted in the notes on the enhancement of rent prepared by Mr.P.M.Mookerjee dated 18th March, 1880, para. 4 = Appendix to the report of the Rent Law Commission, 1880.

of the ruling power to protect all classes of people and more particularly those who, from their situation, are helpless, the Governor General in Council will, whenever he may deem it proper, enact such Regulations as he may think necessary for the protection and welfare of ... ryots and other cultivators of the soil", no attempt was made to give effect to that declaration till 1859.

With the introduction of the Bengal Rent Act, 1859 dawned a new era in the history of the tenancy law in Bengal. Sixty six years after the Permanent Settlement, Government took the first effective step to redeem its pledge to protect the raiyats, that had been given in the proclamation mentioned above. The Act of 1859 was not originally intended by its authors to effect any radical change in the rights and status of the cultivating classes. Mr.G. Currie, who introduced the Bill in the Council said that its object was merely "to re-enact in a concise and distinct form the provisions of the existing law relating to the rights of raiyats with respect to the delivery of pattas, the adjustment of rates of rent, and the occupancy of land, and to the prevention of illegal exaction and extortion in connection with demands for rent".[6] But the draft

---

6. Quoted by Mr.A.Mackenzie in his note on the rights and status of the cultivating classes dated 6th January, 1880, para. 2 = Appendix to the report of the Rent Law Commission, 1880.

Bill was subsequently amended by the Select Committee and, during the passage of the Bill through the council, important additions were made.[7] The Act of 1859 came at a time when the evils of the existing state of things were so patent that, in giving the assent to the Bill, Lord Canning, then Governor-General of India was able to say that "no objection is suggested to the nature of the settlement which the Bill contemplates".[8] The Act introduced important changes in the substantive law of landlord and tenant. It abolished the old distinction of raiyats and divided them into three distinct classes, viz., (a) raiyats at fixed rates,[9] (b) raiyats having rights of occupancy,[10] and (c) raiyats not having rights of occupancy.[11] The right of occupancy was conferred on those who had continuously held the same land for 12 years either personally or through their predecessors.[12] But this rule did not apply to nij jote[13] lands let for a term or year by year.[14] The

---

7. Selections, p.44.
8. The Bengal Administration Report, 1911-12, para. 165; C.D.Field, Landholding, p.747.
9. The Bengal Rent Act, 1859, sec.3; The Bengal Act, 1869, sec.3.
10. Ibid., sec.5.
11. Ibid., sec.8.
12. Ibid., sec.6.
13. Nij jote = proprietor's private land (The Bengal Tenancy Act, 1885, sec.116; The Bengal Rent Act, 1859; The Bengal Act, 1869, sec.6).
14. The Bengal Rent Act, 1859, sec.6; The Bengal Act, 1869, sec.6.

right of occupancy was conditional on the due payment of rent;[15] it could be barred by written contract.[16] The Act also made provisions for enhancement[17] and abatement[18] of rent on specified grounds. The raiyats could be ejected for arrears of rent only by a judicial decree or order.[19] The Act renewed the attempt to bring about an interchange of pattas[20] and kabuliats,[21] directed the delivery of receipts for rent[22] and transferred the original jurisdiction in suits between landlord and tenant from the Civil Courts to the Revenue Courts.[23] The law of distraint was modified but not abolished; the crops could be distrained for arrears of rent for one year only.[24] The power vested

---

15. Ibid.,
16. Ibid., sec.7.
17. The Bengal Rent Act, 1859, sec.17; The Bengal Act, 1869, sec.18.
18. The Bengal Rent Act, 1859, sec.18; The Bengal Act, 1869, sec.19.
19. The Bengal Rent Act, 1859, sec.21; The Bengal Act, 1869, sec.22.
20. Ibid., sec.2.
21. The Bengal Rent Act, 1859, sec.9; The Bengal Act, 1869, sec.10.
22. The Bengal Rent Act, 1859, sec.10; The Bengal Act, 1869, sec.11.
23. The Bengal Rent Act, 1859, sec.23.
24. Ibid., sec.113; The Bengal Act, 1869, sec.69.

in the zemindars and other landholders of compelling the attendance of their tenants for the adjustment of their rents or for any other purpose was withdrawn, and all such persons were prohibited from adopting any means of compulsion for enforcing payment of the rents due to them.[25] The Act introduced for the first time definite provisions regarding suits for arrears of rent[26] and execution of its decrees.[27]

But the defects in the Bengal Rent Act, 1859 soon appeared. In the application of the provisions for enhancement of rent the first serious difficulty was encountered.[28] In Hills v. Iswar Ghose Peacock C.J. decided in 1862 that a "fair and equitable rent" under the Bengal Rent Act, 1859, was nothing more or less than the competition rent of the Western economists. That decision did not commend itself as sound to those who were best acquainted with the true position and rights of the Bengal raiyats. Three years afterwards, it was overruled by the High Court in what is popularly known as the Great Rent Case[29] of 1865. The majority of the Court repudiated the definition of economic rent and the theory that rent ought to be fixed by competition, as inapplicable to the customs and conditions

---

25. The Bengal Rent Act, 1859, sec.11; The Bengal Act, 1869, sec.12.
26. The Bengal Rent Act, 1859, sec.32.
27. Ibid., sec.105.
28. (1862) Marshall's Reports, 151 = W.R. spl.vol. p.48.
29. Thakooranee v. Bisheshur (1865) B.L.R. sup. vol.202 F.B.

of the Country and they held the words "fair and equitable rent" to mean "that proportion of the gross produce calculated in money to which the zemindar was entitled" and to be equivalent to the varying expressions "pargana rates", 'rates' paid for similar lands in the adjacent places and "rates fixed by the law and usage of the country".[30]

In the meantime the amendment of the Bengal Rent Act, 1859 had been suggested in 1863 by Sir Barnes Peacock, then Chief Justice of Bengal and also by the Revenue authorities of the North-Western Provinces.[31] The subject was fully discussed by the High Court of Bengal and the India Government[32] and an amending Bill was drawn up by Mr. W. Muir and circulated for opinion in August, 1865. But Sir Cecil Beadon, then Lieutenant Governor of Bengal, strongly deprecated fresh legislation. In 1867 he again said that any change in the principles of the Act of 1859 would produce undesirable results.[33] Finally, in 1869 by the Bengal Act of that year, the trial of rent suits was transferred from the revenue to the Civil Courts.[34] That Act embodied verbatim the substantive law of the Act of 1859 which it

---

30. Ibid., pp.226-228.
31. Despatch to The Secretary of State No. 6 dated 21st March, 1882, para. 5 = Selections, p.2.
32. Sir C.P. Ilbert's speech dated 2nd March, 1883 = Selections, p.45.
33. Despatch to The Secretary of State No. 6 dated 21st March, 1882, para. 6.
34. The Bengal Act, 1869, sec.33.

repealed.

The following were considered to be the chief defects in the Rent Acts of 1859 and 1869:-

" (i) In the absence of village records the raiyats had great difficulty in proving possession of all their fields for 12 years continuously. It had been the zemindars' practice to change the fields in the possession of raiyats before 12 years had expired in order to prevent their acquiring occupancy rights, or to get them to execute leases for periods less than 12 years.

(ii) It was not laid down in the Act what period should expire before a claim to enhance rents could be entertained.

(iii) The landlords had great difficulty in proving that there had been an increase in the value of the produce because there were not official price lists.

(iv) There was no definition of improvements".[35]

The Act of 1869 proved to be in some respects unworkable. The period from 1870 onwards had been marked, on the one hand, by incessant efforts of the landlords to obtain higher rents and illegal abwabs, and on the other, by a determined opposition of the tenants to demands which they conceived unjust. In Eastern Bengal especially, where the value of the produce was increasing owing to the cultivatio of jute, the landlords found great difficulty in suing for enhancements. The tenants combined to resist the landlords, and in some districts they refused to pay their rents. The history of the period immediately after the Permanent Settlement was repeated. Agrarian discontent grew, and for

35. The report of the Land Revenue Commission, Bengal, dated 21st March, 1940, vol. I., para. 59.

some years the amendment of the Rent Act became the subject of agitation. In Pubna district riots occurred in 1873, when the estate of Natore Raja came in to the market, and was purchased by five zemindars, each of whom tried to make the best of his bargain by raising his rent. "The landlords were Hindus, the tenants were Muslims; and religious difference, fanned the flame of opposition by the latter to the demands of a new and rent-raising landlord. Short measurements, illegal cesses,the forced delivery of agreements to pay enhanced rents, were the main grievances which the cultivators banned themselves together to resist". Though the disturbances were put down with the strong hand (there were 242 arrests and 99 convictions in the sadar sub-division of Pabna) the enquiries which the Government made into the cause of the outbreak brought into very clear light the substantial character of the tenant's grievances and the need of applying a drastic remedy. The Agrarian Disputes Act, 1876 was passed only to meet emergencies like those of 1873 by transferring, in special localities and for a limited period, the jurisdiction in matters of enhancement and arrears from the Civil Courts to the Revenue authorities. The Act was a temporary measure, designed to be supplemented later by permanent legislation but it was never actually put into force.

Sir R. Temple then Lieutenant Governor of Bengal, proposed, in August, 1876, to introduce a Bill to define the principles on which the rights of occupancy raiyats and tenure-holders should be fixed, to simplify the procedure for realising arrears of rent in undisputed cases and to make the interest of an occupancy raiyat liable to sale for default in paying rent and transferable by private agreement. These proposals had not, however, been fully considered when Sir R. Temple, early in 1877, made over charge to Sir Ashley Eden; it was then arranged that the larger amendment of the law should be deferred and a Bill providing only for the realisation of undisputed arrears introduced at once. When, however, the Bill was introduced in the Bengal Council, it was found impracticable to limit its scope to procedure only. There was a lengthy discussion of the question whether right of occupancy could be transferred and it was recognised that the legislature would have to amend the law relating to ejectment, distraint, instalments and deposit of rent and sub-letting. In February 1879, a majority of the Select Committee recommended that a total revision of the Rent Law must, once for all, be fairly faced.

This proposal was supported by Sir Ashley Eden and in April, 1879, the Government of India sanctioned the formation of a Commission to prepare a digest of the

existing statute and case law and to frame the draft of a consolidated Bill. Meanwhile, a separate discussion had been going on with reference to the abuses prevailing in the relations between landlords and tenants in Behar. As far back as the year 1868, Lord Lawrence, who was then the Governor General of India, had recorded a minute regarding the depressed state of the peasantry in Behar, in which he said that he believed "that it would be necessary for the Government, sooner or later, to interfere and pass a law, which should thoroughly protect the raiyat and make him, what he is now only in name, a free man, a cultivator with the right to cultivate the land he holds, provided he pays a fair rent for it". Again in the years 1875 and 1876, when conditions in Behar came under consideration, it was acknowledged that some remedy must be applied. Two years later, the Lieutenant Governor, Sir Ashley Eden, appointed a committee of experienced Behar officials to advise on the matter; and on the 8th March, 1879, they submitted a report, proposing so many changes of the existing law that they did not consider that the requirements of the case could be properly met by mere amendments. They were of the opinion that the whole Rent Law should be recast. Thus two independent committees arrived simultaneously at the same conclusion, namely that the time for a complete revision of the existing law had arrived.

The Rent Law Commission was appointed in April, 1879 about a month after the presentation of the report on Behar and that report was referred to the Commission for consideration. The Commission submitted its report with a draft Tenancy Bill in June, 1880. Sir Ashley Eden accepted that Bill as a reasonable basis for legislation and placed Mr. Reynolds upon special duty. He prepared a second draft Bill in May, 1881; and in July of the same year, Sir Ashley Eden submitted his report with a third draft Bill, embodying the provisions as finally settled by him. The report of the Bengal Government was submitted by the India Government with their own proposals to the Secretary of State for India in March, 1882. And following the instructions received from him as to the general lines of legislation, the Bill was introduced into the India Council on the 2nd March, 1883.[36] That Bill, after being twice recast and materially altered, was finally passed by the Council as the famous Bengal Tenancy Act, 1885, which repaired the defects in the Rent Acts of 1859 and 1869.

---

36. Sir C.P. Ilbert's speech in the Council of the Governor General in India dated 2nd March, 1883 = Selections, pp.46-47; Despatch to the Secretary of State No.6 dated 21st March, 1882, paras.11 to 35; The Bengal Supplementary Administration report 1882-87 (compiled by G.A.Grierson, Calcutta: Bengal Secretariat Press,1887) pp.94-97; Statement of objects and reasons of the Bill of 1883, paras. 5 to 10 = Selections, pp.194-95; The report of the Land Revenue Commission, Bengal dated 21st March, 1940, vol.I, paras. 59-61.

CHAPTER 2

Classes of raiyats.

In this chapter we shall consider the meaning of the word raiyat, the different classes of raiyat and the difference between the incidents of the tenures of the different classes. We shall devote special attention to raiyats with an occupancy right, considering not only its nature but also the various circumstances in which it could be acquired and extinguished. The differences between a tenure-holder and a raiyat will be indicated and the situation of raiyats at fixed rates and non-occupancy raiyats will be considered.

Sec.1. Who are raiyats.

Meaning of raiyat. - "The Arabic word 'Rayet' or 'Ryot'," said Rouse, "strictly means no more than subject, and its plural Raaya, which is the term mostly used in the Acts of Government or political disquisitions, signifies in a collective sense the people or subjects; applying however more particularly to the inferior classes, but not necessarily cultivators, nor any tenants at all to the King, or any other persons".[1] According to Wilson's

---

1. C.W.B.Rouse, Dissertation on Landed Property of Bengal (London: John Stockdale, 1791) pp. 73-74; G.Campbell, Cobden Club Essay on Land Tenure of India (London: Macmillan & Co., 1870, hereinafter referred to as Cobden Club Essay) p.162; N.B.E.Baillie, op.cit.,p.53,f.n.

glossary and Shakespear's dictionary, raiyat appears to mean a subject, cultivator[2] or peasant.[3] "For the term ryot", said Colebrooke, "though properly intending a subject generally, is restricted to mean citizens contributing directly to the revenue of the State, whether as tenants of land paying rent, or as traders and artificers paying taxes".[4] Mr. Grant, the Officer-in-Charge of the khalsa or the Exchequer office under the service of the East India Company, tells us that the raiyats of Bengal "are the husbandmen and peasantry" and "they hold directly of the Prince by immemorial usage".[5] Gholam Hossain Khan, a historian, in answer to a question put to him by Mr.Caldicott conducting an enquiry under the orders of

---

2. Fifth Report from the Select Committee of the House of Commons, 1812, p.20; N.B.E.Baillie, op.cit., p.xxxii; Civilian, op.cit., pp. ix, 21; W.W.Hunter, Bengal MS. Records, vol.I, p.47.
3. Hurish v. Alexander (1863) Marshall's Reports, 479 at 482-83; H.H.Wilson, Glossary (London: H.Allen & Co., 1855) pp. i, 443; Glossary to the Fifth Report from the Select Committee of the House of Commons, 1812.
4. H.T.Colebrooke, Remarks on the Present State of the Husbandry and Commerce of Bengal (Calcutta, 1795) p.33.
5. Quoted by C.W.B.Rouse, op.cit., p.73.

the Court of Directors in their revenue general letter of 12th April, 1786, in pursuance of section 39 of the Pitt's India Act, 1784, for the purpose of ascertaining the rights of landholders,[6] defined raiyats as "all who reside within the limits of any person's territory are that person's ryots".[7] Royroyan[8] in answer to the said enquiry defined a raiyat as "a person holding a portion of land subject to the payment of revenue".[9]

Messrs. David Anderson, Charles Croftes and George Bogle, the Commissioners appointed in 1776 to collect materials for the settlement of the revenue of Bengal, defined raiyat as "the immediate occupant of the soil, whether he is considered as proprietor or tenant ... The word 'ryot' in its most extensive signifaction means a subject, but is usually applied to the numerous and inferior class of people, who hold and cultivate small[10]

---

6. J.H.Harington, Analysis, vol. III, p.227.
7. Ibid., p.335.
8. 'Royroyan' = was a chief officer in the revenue department, next to the Dewan under the native government (C.W.B.Rouse, op.cit., p.320).
9. J.H.Harington, Analysis, vol.III, p.352.
10. Sir John Shore's Minute dated 18th June, 1789, para. 216; J.H.Harington, Analysis, vol.III, p.419; Cunningham J's Minute quoted by Sir C.P.Ilbert in his speech dated 2nd March, 1883 while moving for leave to introduce the Bengal Tenancy Bill, 1883 = Selections, p.42.

spots of land on their own accounts".[11] In the opinion of Lord William Bentinck the term raiyat "comprises the whole agricultural community".[12] The Board of Revenue also in its circular No. 29 dated 12th November, 1833 directed that "under the general term 'ryot', it is intended to include every class of under-tenant or husbandman (not being a hired labourer)".[13] An anonymous writer observed in a published article[14] that "the word 'ryot' does not necessarily mean a cultivator for a man may be a ryot without being himself a cultivator. It has particular reference to jote.[15] Persons who have lands in their own jote or in the jote of others, or who are residents in any zemindari[16] or taluk[17], are called ryots".

---

11. The report of Messrs. Anderson, Croftes and Bogle dated 25th March, 1778, Appendix No. 14, pp.345-46 (Home Series, Misc. 206, vol.I, India Office Library, London); E.H.Whinfield, op.cit., p.15; J.H.Harington, Analysis, vol.II, p.65.
12. Governor General's Minute dated 26th September, 1832, para. 18 = Sudder Board of Revenue Proceedings, Bengal, Range 81, vol.56, serial No. 44 dated 3rd May, 1833, India Office Library, London; Civilian, op.cit., p.ix.
13. Sudder Board of Revenue Proceedings, Bengal, Range 81, vol.62, serial No. 39, India Office Library, London.
14. Article on "the zemindar and the Ryot" = Calcutta Review, 1846, vol.VI, p.323.
15. jote = holding of a raiyat (M. Finucane and Ameer Ali, op.cit., p.869).
16. 'zemindari' = estate.
17. 'taluk' = a tenure (C.W.B. Rouse, op.cit., p.321; M. Finucane and Ameer Ali, op.cit., p.901).

As there was no statutory definition of raiyat before the Bengal Tenancy Act, 1885, the High Court at Calcutta, however, had in several cases to define the status of a raiyat and distinguish it from that of a tenure-holder as the incidents of a raiyati holding under the law differed in several material respects from those of a tenure. In the case of Maharaja Narendra Narayan Bhup[18] it was held that "persons possessing an interest in land intermediate between the proprietor of an estate and the ryots, are not ryots". In Dhunput v. Gooman[19] Seton-Karr and Jackson, JJ., observed:- "It is very difficult to lay down any general interpretation of the word 'ryots'. As a general rule, they are the cultivating tenants, but they may not be cultivators at all themselves; they may cultivate their land by hired labour or by under tenants". A raiyat who held land under cultivation by himself or by others was declared not to be a middleman.[20] Mere sub-letting of part of the holding did not alter the original character of a raiyat's holding.[21] When a tenant took land for agricultural

---

18. quoted in the Law of Landlord and Tenant edited by the Board of Revenue, Bengal, 1864 for use of Revenue Officers, p.3.
19. (1864) W.R. Gape vol. (Act X) 61;
20. Karoo v. Luchmeeput (1867)7 W.R (C.R) 15 at 16; Ram v. Lukhee (1864) 1 W.R (C.R) 71; Kalee v. Ram (1868) 9 W.R. 344.
21. Uma v. Uma (1867) 8 W.R.181.

purposes and erected buildings on it he still continued to be a raiyat. He did not become a middleman simply because, instead of cultivating the land, he erected shops on it and received rent from the shop-keeper.[22] Mitter J., observed:- "Whatever may be the true definition of the ryot as used in Act X of 1859, it is by no means necessary that he should be an actual cultivator".[23] "The only test of a ryoti interest", said Field J., "is to see in what condition the land was when the tenancy was created. If the ryots were already in possession of the land, and the interest created was a right not to the actual physical possession of the land, but to collect the rents from the ryots, it is not a ryoti interest. If on the other hand, the land was jungle or uncultivated or unoccupied, and the tenant was let into physical possession of the land, that would be a ryoti interest; and the nature of this interest so created would not, according to a number of decisions of this court, be altered by the subsequent fact of the tenant sub-letting to under-tenants".[24]

In this state of judicial decisions as to the

22. Khujoorunissa v. Ahmed (1869) 11 W.R. 88.
23. Durga v. Undatannissa (1872) 9 B.L.R. 113.
24. Durga v. Kalidas (1881) 9 C.L.R. 449.

status of a raiyat, the framers of the Bengal Tenancy Act, 1885 defined a raiyat in section 5(2) on the basis of the report[25] of the Rent Law Commission, 1880 and in conformity with the earlier rulings of the High Court, as "primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family or by servants or labourers,[26] or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right". The interest of a raiyat was termed a holding.[27] A person should not be deemed to be a raiyat, unless he held land either immediately under a proprietor or immediately under a tenure-holder.[28]

It may now be observed that the definition of raiyat provided in section 5(2) of the Act was not exhaustive;[29] there was nothing in the definition which would exclude a person who had taken land for horticultural purposes.[30]

---

25. Para. 10 of the report.
26. The words "servants or labourers" were substituted for the words "hired servants" by section 5 of the Bengal Tenancy (Amendment) Act, 1928; The report of the Select Committee of the Bengal Tenancy (Amendment) Bill, 1926, clause 7 = The Calcutta Gazette dated July 22, 1926, part IV, p.60.
27. The Bengal Tenancy Act, 1885, sec. 3(5); (Before the Amending Act of 1928 it was clause (9)); The report of the Rent Law Commission, 1880, para. 10.
28. The Bengal Tenancy Act, 1885, sec.5(3).
29. Mohesh v. Manbharan (1901) 5 C.L.J. 522.
30. Hurry v. Nursingh (1893) I.L.R. 21 Cal.129; Umrao v. Mohomed Rojabi (1899) I.L.R. 27 Cal. 205.

The word 'raiyat' did not necessarily mean an agricultural tenant. It was sometimes used in official documents to mean tenants in general.[31] It was provided in sec. 5(3) of the Act that a person must not be deemed to be raiyat unless he held land either immediately under a proprietor or immediately under a tenure-holder. But in the Full Bench Decision in Binodlal v. Kalu,[32] it was held that when a person acquired a right to hold land bona fide from one whom he bona fidd believed to have the right to let him into possession of the land, he was a raiyat, although the person under whom he held might be a trespasser.

It was admitted by the framers of the Bengal Tenancy Act, 1885 that the definition of raiyat given in sec. 5(2) was not exhaustive. While moving for leave to introduce the Bill of 1883 Sir C.P. Ilbert said:-[33]

"How is that class (raiyat) to be defined ? I have often asked that question, and the answers which I have received remind me of the well-known answer which is said to have been given by a Cambridge undergraduate to the Board of examiners who pressed him sorely to define

---

31. The Secretary of State v. Jaday (1916) 21 C.W.N. 452.
32. (1893) I.L.R. 20 Cal. 708 at 713 F.B.
33. Selections, p.54.

the centre of a circle. He traced a circle with his finger in the air, pointed to the middle of it, and said 'there'. We all know in general way what is meant by expression '<u>raiyat</u>'; We all know in a general way what we mean when we speak of the resident or settled <u>raiyat</u>, or of the resident or settled cultivator; but we can not give any precise definition of the class without running a serious risk of including some whom we ought to exclude, and of excluding some whom we ought to include. An element of arbitrariness is necessarily inherent in every definition which we can possibly frame".

<u>Difference between tenure-holder and raiyat</u>. - The case-law as to the distinction between a tenure-holder and a <u>raiyat</u> before the passing of the Bengal Tenancy Act, 1885 was uncertain and inconvenient, and was built up of isolated cases dealing with individual rights which were the complement of the rights of other persons not before the Court, and were therefore not considered.[34] The Rent Law Commission, 1880 summarised[35] the case-laws as to the

---

34. The report of the Rent Law Commission, 1880, para.19.
35. <u>Ibid</u>; C.D.Field, <u>Digest</u>, p.38 f.n.7.

distinction between the two classes of tenants as it stood before the Bengal Tenancy Act, 1885 under the following groups:-

(a) that, if a person took land and at once sub-let it, he became a middleman (tenure-holder) and did not acquire a right of occupancy in such land;

(b) that, if a raiyat, who had acquired a right of occupancy in land, sub-let such land, he did not thereby forfeit his right of occupancy;

(c) that, such a raiyat could not, by so doing, alter the nature of his holding, and convert it into an under-tenure.

Under section 5(1) of the Bengal Tenancy Act, 1885 a tenure-holder was defined as "primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it and includes also the successors-in-interest of persons who have acquired such a right". We have noted above that sec. 5(2) defined a raiyat as "primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family or by servants or labourers or with the aid of

partners, and includes also the successors-in-interest of persons who have acquired such a right". The interest of a tenure-holder was designated a tenure[36] while the interest of a raiyat a holding.[37]

It is difficult to draw a hard and fast line of distinction between a tenure-holder and a raiyat. In this regard the Rent Law Commission, 1880 observed:-[38]

"After the fullest consideration of the whole subject it appears to us impossible to discover any principle of distinction between ryots and tenure-holders or under-tenure-holders, which will hold good universally or even in the large majority of ~~classes~~ cases. If cultivation be taken as the test whether the interest of a particular tenant is a tenure (or under-tenure) or a ryoti holding, a talukdar, tenure-holder or under-tenure-holder, may cultivate land forming part of his taluk, tenure or under-tenure, while the person commonly called a ryot may have sub-let his entire holding and may not himself cultivate a single square foot. It is impossible, therefore, to say that, under all circumstances, the person who cultivates

---

36. The Bengal Tenancy Act, 1885, sec.3(18). Before the Amending Act of 1928 it was clause (7).
37. Supra, p.66.
38. Para. 20 of the report.

is a ryot, and the person who does not cultivate is a tenure-holder. If the receipt of rents from persons in the actual occupation of the land be considered the essence of a tenure-holder or under-tenure-holder, then we find ryots also sub-letting and receiving rents from their tenants in actual occupation. If heritability be tried, the ryot's interest, the ryot's holding is heritable as well as the taluk. Is transferability the test? The ryot's jumma,[39] independently of Act X of 1859 and VIII of 1869, is commonly transferable by custom. Is saleability for its own arrears set up as the true distinction? The landlord at his own option brings ryot's holding to sale in execution of decrees for rent, while a tenure or under-tenure is not subject to the special law for the sale of under-tenures for the recovery of arrears of rent due in respect thereof, unless it is so saleable by the title deeds or established usage of the country. If the quantity of rent paid by the tenant be supposed to be the point of distinction, then in Rungpore the rent of a jote varies from one rupee to half a lakh of rupees; while in other

---

39. 'Jumma' means the total amount of rent or revenue payable by a tenant including all cesses and land-tax (H.H.Wilson, op.cit., 227). In the instant context it means a holding.

districts the rent of many taluks is but a few rupees. It is true that a tenure-holder or under-tenure-holder is not liable to enhancement upon the grounds applicable to a ryot having a right of occupancy; but this distinction stops here, for the existing law does not define the grounds upon which the rent of a tenure or under-tenure can be enhanced".

The Select Committee to which the Bengal Tenancy Bill was referred to was also of the same opinion. They in their report[40] said:-

"In the section which relates to the distinction between tenure-holders and raiyats, we have endeavoured to describe, rather than to define each class. Whilst recognizing the expediency of laying down rules for the guidance of courts in dealing with cases which lie near the border-line between the two classes, we retain the opinion that any attempt to frame a rigid definition of either class would tend to create rather than remove difficulties".

Dealing with the distinction between the two classes of tenants in one of the debates in Council,

---

40. The report of the Select Committee on the Bill of 1883 dated 14th March, 1884, para. 5 = Selections, p.240.

Sir Steuart Bayley, member-in-charge of the Bill, said:-[41]

"The question has constantly to be decided both by courts and by settlement officers whether a man is a raiyat or a tenure-holder. Now we do not absolutely define a tenure-holder but we describe him as a person primarily who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents, or bringing it under cultivation by establishing tenants on it, and we describe a raiyat as primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself. The first thing then which the court has to do is to ascertain whether a man is a tenure-holder or a raiyat. If the land was given for the purpose of collecting rents, then he is a tenure-holder. We tell the courts the first thing they are to look to is local custom, but local custom may not always be sufficient to guide them, and then they have to ascertain what was the original object of the tenancy. There is still some difficulty, and it is one which experienced officers tell us it is essential the courts

---

41. Extract from the Proceedings of the Council of the Governor General of India dated 4th March, 1885 = Selections, p.508.

should be able to decide. Well, in that case we fall back on the arbitrary presumption derived from the area of the holding. It will, I suppose, be admitted that in nine cases out of ten, where a man takes 100 bighas[42] of land, he cultivates it through others, and only cultivates a small portion of it directly". The learned member then went on to explain that the presumption arising from the tenant's holding an area exceeding 100 bighas would not convert a raiyat into a tenure-holder, but "it will in cases of real doubt give the courts that assistance of a presumption which has already been decided by the High Court to be in principle a presumption by which the courts should be guided. It will not really go beyond this".[43]

As the distinction between a tenure-holder and a raiyat was not precisely drawn in the Act, it might sometimes be difficult to find out the distinction, specially when the origin of the tenancy was not known or the terms of the document were ambiguous. To obviate such

---

42. 'bigha' is about one third of an English acre. In Bengal the bigha contained only 1600 square yards or less than one third of an acre. (C.W.B. Rouse, op.cit., p.321; H.H.Wilson, op.cit., p.85; The report of the Bengal Government on the Bengal Tenancy Bill dated 15th September, 1884, para. 22, (marginal note) = Selections, p.353.
43. Selections, p.508; The report of the Rent Law Commissions, 1880, para. 22.

difficulty several tests were provided in the Act:- "In determining whether a tenant is a tenure-holder or a raiyat, the court shall have regard to (a) local custom; and (b) the purpose for which the right of tenancy was originally acquired.[44] Where the area held by a tenant exceeds one hundred standard bighas, the tenant shall be presumed to be a tenure-holder until the contrary is shown".[45] Similarly the Judicial Committee of the Privy Council held:-[46]

"In determining the status of a tenant, viz., whether he is a tenure-holder or raiyat, two elements have to be borne in mind, firstly, the purpose for which the land was acquired, and secondly, the extent of the tenure or holding. A close examination of the definition clauses makes it quite obvious that both these elements are closely interrelated. The law assumes the raiyat to be the actual cultivator of the soil either by his own labour or by the labour of members of his family or by hired labourers, and it assumes also that ordinarily a

---

44. The Bengal Tenancy Act, 1885, sec. 5(4).
45. Ibid., sec.5(5); The report of the Select Committee of the Bengal Tenancy Bill, 1884, dated 12th February, 1885, para. 4 = Selections, p.402.
46. Debendra v. Bibudhendra (1918) 22 C.W.N. 674 at 677 P.C. = I.L.R. 45 Cal. 805 P.C.

larger area than 100 bighas would make cultivation by personal agency of the tenant improbable. The presumption provided in sub-section (5) of section 5 is founded on that hypothesis".

Let us now consider the development of the law on the subject in the rulings of the Courts. Dealing first with the purpose of the tenancy, this was found, as between the parties, from the basic document, if any. If there was a written lease, which clearly indicated the intention of the parties there was no difficulty in determining the class of the tenancy. But where the terms of a lease creating the tenancy were ambiguous or where there was no written lease and it was not clear what the original purpose of the tenancy was, the court should look into the subsequent conduct of the parties and surrounding circumstances to determine the nature of the tenancy.[47] Thus where the original area of the lands taken was considerably more than what could be cultivated by the tenant himself or by members of his family or by hired servants or with the aid of partners and the tenant himself

---

47. Raja Promoda v. Asiruddin (1911) 15 C.W.N. 896 at 905; Secretary of State v. Digambar (1917) I.L.R. 46 Cal. 160.

was not a member of the cultivating class and where subsequent settlements were also of large areas and the total area held by the tenant exceeded 1300 bighas, it was held[48] that these circumstances led to the conclusion that these lands were taken for the purpose of settling tenants on them and that the lease was a tenure. Once, however, the original grant was clearly shown to be a raiyati by a lease unambiguous in its terms or by other evidence where there was no written lease, the mere fact that the tenant subsequently sub-let the land would not alter the character of the tenancy.[49] A tenancy which was originally created for the purpose of cultivation and not collection of rent, was partly held nij-jote and partly let out to sub-tenants, it was held[50] that this did not change the original character of the grant which was raiyati even in respect of the portion let out. The fact that the tenants were bhadraloques[51] did not by itself show that the lands were not acquired for the purpose of cultivatio

---

48. Midnapore zemindary v. Shamlal (1910) 15 C.W.N. 218.
49. Raja Promoda v. Asiruddin (1911) 15 C.W.N. 896 at 906; Rajani v. Yusuf (1916) 21 C.W.N.. 188 at 189; The report of the Rent Law Commission, 1880, para.21.
50. Baidya v. Sudharam (1904) 8 C.W.N.751.
51. 'Bhadraloque' = a Bengali word meaning gentleman.

as most bhadrologues in the villages in India carry on cultivation by servants or labourers.[52]

Where land was let entirely for erecting houses and buildings and not for any agricultural purposes, it did not come within the purview of the Bengal Tenancy Act. Hence land granted under a lease for building purposes and for establishing a coal depot was held[53] not to come within the purview of the Act, since the lease was not for agricultural or horticultural purposes, or for any purposes mentioned in section 5 of the Act; and the lessee was held to be neither a tenure-holder nor a raiyat within the meaning of the Act. It was ruled[54] by Maclean C.J. and Banerjee J., that the mere fact that a person acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rent, was not sufficient to prove that he was a tenure-holder with the meaning of the Act. It must be proved that the land was let out as a holding for agricultural or horticultural purposes. In that case the land was situated within the municipality of Dacca, and there was nothing to show that

---

52. Rajani v. Yusuf (1916) 21 C.W.N. 188 at 191.
53. Raniganj Coal Association v. Jadoonath (1892) I.L.R. 19 Cal. 489.
54. Umrao v. Mahomed Rojabi (1899) I.L.R. 27 Cal. 205.

it was let out for agricultural or horticultural purposes. But if agricultural or horticultural land was let out for the purpose of collecting rents the lessee would be a tenure-holder, although he might not cultivate any of the lands himself.

Where the origin of the tenancy was unknown, the mode of user of the land might furnish a valuable clue to determine the original purpose of the tenancy.[55] The real question under sec. 5 of the Bengal Tenancy Act was not whether the purpose of the tenancy was cultivation but whether it was cultivation by the tenant himself or by members of his family or by hired servants.[56] In Ram v. Mohan[57] a permanent lease on fixed terms comprising 99 bighas of land in the Sundarbans was granted to a Brahmin, a pension-holder residing at a distance in Midnapore on payment of salami[58] of Rs 1000. One of the terms of the lease was that the lessee would enjoy and possess the said land by dwelling on the same, by cultivating it, by planting trees, by cutting them down, by excavating a tank, by erecting pacca buildings, etc., generation after

---

55. Secretary of State v. Digambar (1917) I.L.R 46 Cal.160.
56. Ram v. Mohan (1931) 35 C.W.N. 1143.
57. Ibid.,
58. 'salami' = a free gift made by way of compliment or in return for a favour (Glossary to the Fifth report from the Select Committee of the House of Commons, 1812).

generation with power to transfer by gift, sale, etc., It appeared that some 20 bighas were cultivated by tenants and bulk of the lands were cultivated by bhag-chasis.[59] It was held by Rankin C.J. and Pearson J., that the lease did not create a raiyati holding.

The description of an interest in land as a jote did not necessarily show that it was not a tenure; until the contrary was proved, the holding must be regarded as a tenure.[60] Where more than 250 acres of land was leased to a man of means, a resident of another place, for the purpose of reclaiming the land and rendering it fit for cultivation, the agency to be employed for cultivating it being left to his discretion, it was held[61] by the Judicial Committee of the Privy Council that the tenant was a tenure-holder and not a raiyat. Whether the tenants were really raiyats or tenure-holder was ultimately a question of fact; one must look to the attendant circumstances to judge of

---

59. 'bhag-chasis' = persons who cultivate land rendering a share of the produce to the landlord. They are also called bargadars and adhiars. (Secretary of State v. Gobind (1916) 21 C.W.N. 505 at 506; The Bengal Tenancy Act, 1885, Proviso to sec.3(17). It was clause (3) before the Amending Act of 1928).
60. Syed Nowab v. Hemata (1903) 8 C.W.N. 117; Midnapore zemindary v. Naresh (1920) I.L.R. 48 Cal. 460 at 461 P.C.
61. Debendra v. Bibudhendra (1918) I.L.R. 45 Cal. 805 P.C. = 22 C.W.N. 674 P.C.

the purpose for which the land was acquired.[62] In Rajani v. Secretary of State[63] the Judicial Committee held that where a tenant acquired land and reclaimed it merely in order that it might be cultivated by others who would pay rent to him, whilst he resided and followed his avocations elsewhere and had no intention of cultivating it by himself, it was a tenure, not a raiyati holding.

Turning now to a consideration of the area involved, we have noted the ruling[64] of the Judicial Committee of the Privy Council that the presumption under section 5(5) of the Bengal Tenancy Act, was based upon the hypothesis that ordinarily a larger area than 100 bighas would make cultivation by personal agency of the tenant improbable. The presumption under that section was a rebuttable one and did not apply where the terms of the original grant were known. It might be rebutted by a kabuliat or by an entry in the record of rights.[65] Thus

---

62. Ibid., Rajani v. Secretary of State (1918) I.L.R. 46 Cal. 90 at 99 P.C.
63. Ibid., pp.90-91 P.C.
64. Debendra v. Bibudhendra (1918) 22 C.W.N. 674 at 677 P.C. = I.L.R. 45 Cal. 805 P.C.
65. Jitindra v. Raicharan (1928) 33 C.W.N.356; Surendra v. Baroda (1904) 10 C.W.N. clxiv.

where a kabuliat expressly stated that the tenancy exceeding 100 bighas in area was a raiyati one and prohibited sale, erection of permanent structures, digging of tank or ditches, cutting of trees and sub-letting of land, it was held[66] that its incidents were those of a raiyati holding and not of a tenure and the presumption under section 5(5) was rebutted. Rankin C.J. and Ghose J., observed[67] that there was no presumption whatever that the holder of less than 100 bighas was a raiyat. Similarly the Rent Law Commission, 1880 observed:-[68] "The person who holds one hundred bighas or less may be a tenure-holder or a ryot, as he and his landlord wish and agree."

The area held by the tenant in sec. 5(5) meant the area of a particular holding or letting over which the question in controversy arose.[69] That section did not contemplate an enquiry as to all the lands one might possess under the landlord or otherwise. It left the court free to discover by ordinary means the purpose for which the right of tenancy was originally acquired, viz., by the construction of a kabuliat or a patta or in the absence

---

66. Jitindra v. Raicharan (1928) 33 C.W.N. 356.
67. Hari v. Gour (1929) I.L.R, 56 Cal. 1164 at 1168; Ram v. Mohan (1931) 35 C.W.N. 1143 at 1146.
68. Para. 22 of the report.
69. Hari v. Gour (1929) I.L.R. 56 Cal. 1164 at 1168.

of evidence of that kind, by an investigation of all the relevant circumstances.[70] Lord Davey and other Judges of the Judicial Committee held[71] that the presumption was not sufficiently rebutted by the fact that the kabuliat executed by the tenant was on a printed form intended for cultivators or that in a receipt for rent given by the landlord to the tenant, the later was described as a raiyat; the question whether a tenant was a tenure-holder or raiyat was one of substance and not of form. The mere fact of consolidation of a number of separate raiyati holdings could not alter the nature of the tenancies and convert them into a tenure unless the landlord and the tenant agreed at the time that the holdings should thenceforth be a tenure.[72]

It may now be observed that the distinction between a tenure-holder and a raiyat as provided in section 5 of the Bengal Tenancy Act, 1885 were not exhaustive; it was admitted even by the framers of the Act. Still it is, in the absence of any such provision before the Act, undoubtedly a distinct improvement upon the earlier laws and it greatly helped the Courts by providing a clue to the

---

70. Hari v. Gour (1929) I.L.R. 56 Cal. 1164.
71. Gakul v. Padmanund (1902) 6 C.W.N. 825 P.C.
72. Manmoth v. Anath (1918) 23 C.W.N. 201 at 202.

determination of the status of a raiyat and distinguishing it from that of a tenure-holder.

Classification of raiyat. - There were two methods of classifying raiyats with respect to their residence and with respect to the method of paying rent. With respect to their residence raiyats were classified as khoodkasht or resident cultivator and pyekasht[73] or non-resident cultivator. Messrs. Anderson, Croftes and Bogle in their report said:-[74] "The name of khood-kasht is given to those ryots who are inhabitants of the village to which the lands that they cultivate belong."[75] Their right of

---

73. pyekasht = from 'pahi', near or from, 'pay', the foot, and kasht, cultivation (M.Finucane and Ameer Ali, op.cit., p.4; C.D.Field, Bengal Code, p.33, f.n.1; C.D.Field, Landholding, p.425 f.n.1; N.B.E. Baillie, op.cit., p.xliii; E.H.Whinfield, op.cit., p.16.
74. Report dated 25th March, 1778; Sir John Shore's Minute dated 18th June, 1789, para. 225; J.H.Harington, Analysis, vol.II, p.64, vol.III, p.422.
75. Sir John Shore's Minute dated 18th June, 1789, para. 406; M. Finucane and Ameer Ali, op.cit., p.4; Civilian, op.cit., p.66; A.Phillips, op.cit., pp.12, 14; C.D.Field, Bengal Code, para. 20; C.D.Field, Landholding, p.423; G.Camblell, Cobden Club Essay, p.161; N.B.E. Baillie, op.cit., p.xlii, R.H.Robinson, An Account of the Land Revenue of British India (London: W.Thacker & Co., 1856) p.14; E.H.Whinfield, op.cit., p.15; W.W.Hunter, Bengal MS. Records, vol.I, p.50; Thakooranee v. Bisheshur (1865) B.L.R. sup. vol. 202 at 209, 214, 253, 310, 320 F.B; Midnapore zemindary v. Hrishikesh (1914) I.L.R. 41 Cal. 1108 at 1121 F.B.; Chandra Binode v. Ala Bux (1920) I.L.R. 48 Cal. 184 at 228 S.B.; Jnanendra v. Harendra (1922) 87 I.C. 32; K.N.R. (a Judicial officer), Article on "The Khudkasht Ryot of Bengal" published in Calcutta Review of 1883, vol.LXXVII, No.153, p.13.

possession, whether it arises from an actual property of the soil, or from length of occupancy, is considered as stronger[76] than that of other ryots, and they generally pay the highest rent[77] for the lands which they held. The pyekasht, on the contrary, rent land belonging to a village in which they do not reside.[78] They are considered as tenants at will,[79] and having only a temporary[80] and accidental interest

---

76. N.B.E.Baillie, op.cit., p.xliii; E.H.Whinfield, op.cit., pp.15-16.
77. A.Phillips, op.cit., p.17; C.D.Field, Bengal Code, para.21; C.D.Field, Landholding, p.425; E.H.Whinfield, op.cit., p.17; M.Finucane and Ameer Ali, op.cit., pp.4-5.
78. Sir John Shore's Minute dated 18th June, 1789, para.407; Report of the Land Revenue Commission, Bengal, dated 21st March, 1940, vol.I, para. 26; F.H.Robinson, op.cit., p.15; C.D.Field, Bengal Code, para.21; M.Finucane and Ameer Ali, op.cit., p.4; Civilian, op.cit., p.80; A.Phillips, op.cit.,pp.19 and 22; C.D.Field, Landholding, p.425; E.H.Whinfield, op.cit., p.16; N.B.E. Baillie, op.cit., pp.xlii, xliii; G. Campbell, Cobden Club Essay, p.161; Thakooranee v. Bisheshur (1865) B.L.R. sup.vol. 202 at 320 F.B.; Midnapore zemindary v. Hrishikesh (1914) I.L.R. 41 Cal. 1108 at 1121 F.B.; Chandra Binode v. Ala Bux (1920) I.L.R. 48 Cal. 184 at 229 S.B; Jnanendra v. Harendra (1922) 87 I.C.32.
79. F.H.Robinson, op.cit., p.15; C.D.Field, Bengal Code, para. 21; Civilian, op.cit., pp.68 and 80; N.B.E.Baillie, op.cit., p.xliii; A.Phillips, op.cit.,pp.14 and 22; C.D.Field, Landholding, p.425; E.H.Whinfield, op.cit., p.16; G. Campbell, Cobden Club Essay, p.161; Midnapore zemindary v. Hrishikesh (1914) I.L.R. 41 Cal.1108 at 1121 F.B.
80. Report of the Land Revenue Commission, Bengal, dated 21st March, 1940, vol.I, para.26; C.D.Field, Bengal Code, para.21; N.B.E. Baillie, op.cit., xliii; G.Campbell, Cobden Club Essay, p.161; C.D.Field, Landholding, p.425; W.W.Hunter, Bengal MS. Records, vol.I, p.62.

in the soil which they cultivate, will not submit to the payment of so high a rent[81] as the preceding class of ryots[82]; and when oppressed, easily abandon their lands to which they have no attachment. The khoodkasht ryots partake of the rights of hereditary landholders[83], the pyekasht are more of the nature of annual or transitory tenants". The khoodkasht raiyats were called under different names[84], viz., chupperbund[85], thani[86], basinda[87], kaimi[88],

---

81. Warren Hastings' Minute dated 12th November, 1776 quoted by W.W.Hunter in his Bengal MS. Records, vol.I, p.63; The Report of the Land Revenue Commission, Bengal, dated 21st March, 1940, vol.I, para.26; C.D.Field, Bengal Code, para.21; C.D.Field, Landholding, p.425; A.Phillips, op.cit., p.17; M.Finucane and Ameer Ali, op.cit., p.4.
82. Warren Hastings' Minute dated 12th November, 1776 quoted by W.W.Hunter in his Bengal MS. Records vol.I, p.63; C.D.Field, Bengal Code, para.21; C.D.Field, Landholding, p.425; M.Finucane and Ameer Ali, op.cit.,p.4.
83. N.B.E. Baillie, op.cit., p.xliii; C.D.Field, Landholding, p.424; A.Phillips, op.cit.,pp.12,14,17; C.D.Field, Bengal Code, para. 20; E.H.Whinfield, op.cit., p.15; W.W.Hunter, Bengal MS. Records vol.I p.50 f.n.1; Thakooranee v. Bisheshur (1865) B.L.R. sup.vol. 202 at 206 F.B.; Midnapore zemindary v. Hrishikesh (1914) I.L.R. 41 Cal. 1108 at 1121 F.B.; Chandra Binode v. Ala Bux (1920) I.L.R. 48 Cal. 184 at 204, 229 S.B.
84. Lord William Bentinck's Minute dated 26th September, 1832, para. 35; M.Finucane and Ameer Ali, op.cit., p.4; Civilian, op.cit., p.66; C.D.Field, Bengal Code, p.31 f.n.2; C.D.Field, Landholding, p.423 f.n.7; F.H.Robinson, op.cit., p.14; A.Phillips, op.cit., p.13; G.Campbell, Cobden Club Essay, p.161; E.H.Whinfield, op.cit.,p.16; Thakooranee v. Bisheshur (1865) B.L.R. sup.vol.202 at 319 F.B.
85. 'Chupperbund' from 'chappar', thatch, house-tied. (A.Phillip, op.cit.,p.13; E.H.Whinfield, op.cit.,p.17).

(cont'd.overleaf)

kadimi[89] and maurasi.[90] Warren Hastings called the pyekasht raiyats as 'vagrant' raiyats.[91] In a Full Bench decision[92] it was observed that the division of raiyats into khoodkasht and pyekasht existed from the time of Hindu Rajas and the same classification continued in Mahomedan times. But according to Finucane and Ameer Ali that classification was made under the Moghul Government.[93] As the expressions used are Persian, it would seem, prima facie that they are right, though the Moghuls may have merely applied their own terms to existing institutions.

(cont'd. from previous page)

86. 'thani' from sthaniya, place, stationary, resident (M. Finucane and Ameer Ali, op.cit., p.4; A.Phillip, op.cit., p.13; E.H.Whinfield, op.cit., p.16; W.W.Hunter, Bengal MS. Records vol.I, p.50 f.n.1).
87. 'basinda' = resident.
88. 'kaimi' = permanent.
89. 'kadimi' = hereditary, ancient (C.D.Field, Landholding pp.664-65; E.H.Whinfield, op.cit., p.16; Thakooranee v. Bisheshur (1865) B.L.R. sup.vol. 202 at 252, 299 F.B; Regulation XI of 1822, sec.32.
90. 'maurasi' = hereditary (A.Phillips, op.cit., p.13; E.H.Whinfield, op.cit., p.16).
91. Warren Hastings' Minute dated 12th November, 1776, quoted by W.W.Hunter in his Bengal MS. Records, vol.I, p.63.
92. Midnapore zemindary v. Hrishikesh (1914) I.L.R. 41 Cal. 1108 at 1117 F.B.
93. M. Finucane and Ameer Ali, op.cit., pp.4, 131.

Messrs. Anderson, Crofts and Bogle divided the raiyats with respect to their manner of paying rents into three classes, viz., harree[94], faslee[95] and khamar[96]. In their report[97] they said:- "The first had a certain quantity of land for which they pay a fixed rent per bigha[98] whether cultivated or fallow, the rent of the faslee raiyats depends on the crop which their land is made to produce. Thus the bigha of ground, if cultivated with mulberry, pays a much higher rent than if sown with rice. The khamar raiyats pay in kind, and give a proportion of the crop as the rent of their land".

Lord William Bentinck divided the raiyats with respect to the manner of their rights into three kinds:- "The first class as being to all intents and purposes, proprietors of the lands which they cultivate, the second as having been tenants-at-will, but acquiring in course

---

94. 'harree' from har, a rent (E.H.Whinfield, op.cit., p.70).
95. 'faslee' from 'fasl', crop, harvest.
96. 'khamar' = khamar lands were the proprietor's private lands. (The Bengal Tenancy Act, 1885, sec.116; E.H. Whinfield, op.cit., p.24 f.n.(d); Sir John Shore's Minute dated 18th June, 1789, para. 405.
97. Report dated 25th March, 1778; J.H.Harington, Analysis, vol.II, pp.64-65; E.H.Whinfield, op.cit., pp.70, 72.
98. Sir John Shore's Minute dated 18th June, 1789, para.224.

of time a prescriptive right of occupancy at fixed rates and the third as mere contract cultivators"[99].

The antiquarian classification of raiyats into khoodkasht and pyekasht continued from the commencement of British Rule till the decennial settlement in 1790-91.[1] The Permanent Settlement Regulations mentioned only the status of khoodkasht raiyats; as to the pyekasht raiyats, they were nowhere expressly mentioned in the laws referring to Bengal.[2] But in the Full Bench Decision in Thakooranee v. Bisheshur,[3] Trevor J., observed: "If they held under pattas at the time of the settlement they were entitled to hold them till the expiry of the lease under the comprehensive terms of clause 1, section 60, Regulation VIII of 1793 which included even them".

The Bengal Rent Act, 1859 obliterated the old distinction of khoodkasht and pyekasht raiyats and introduced a new classification of raiyats. Under that statute the raiyats were classified into three groups:-

---

99. Governor-General's Minute dated 26th September, 1832, para. 33 = Sudder Board of Revenue Proceedings, Bengal, Range 81, vol. 56, serial No. 44 dated 3rd May, 1833, India Office Library, London = Extra Supplement to the Gazette of India, October 11, 1884, p.81.

1. Thakooranee v. Bisheshur (1865) B.L.R. sup.vol. 202 at 214 F.B.
2. Ibid., 219; Midnapore zemindary v. Hrishikesh (1914) I.L.R. 41 Cal. 1108 at 1117 F.B.
3. (1865) B.L.R. sup. vol. 202 at 219 F.B.

(a) Raiyats holding land at fixed rates of rent from the time of the Permanent Settlement.[4]

(b) Raiyats having a right of occupancy,[5] i.e., raiyats holding land for twelve years.[6]

(c) Raiyats not having a right of occupancy i.e., raiyats holding land for less than twelve years.[7]

The Bengal Rent Act, 1859 was replaced by the Bengal Act, 1869 but the substantive law, laid down in the former Act was reproduced in the latter Act almost verbatim.

The Bengal Tenancy Act, 1885, repealed the earlier statutes and classified the raiyats more categorically and broadly[8] into the following three classes:-

(a) Raiyats holding at fixed rates, i.e.,holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity.

(b) Occupancy raiyats, i.e., raiyats having a right of occupancy in the land held by them.

(c) Non-occupancy raiyats i.e., raiyats not having such a right of occupancy.

---

4. The Bengal Rent Act, 1859, sec.3; The Bengal Act, 1869,sec.3
5. Ibid., sec.5.
6. Ibid., sec.6.
7. Ibid., sec.8.
8. The Bengal Tenancy Act, 1885, sec.4.

It may now be observed that to acquire the status of a raiyat at fixed rates under the Rent Acts of 1859 and 1869 it was necessary to hold land from the time of the Permanent Settlement.[9] But the Bengal Tenancy Act, 1885 included in that category also the raiyats who, though not holding from the Permanent Settlement, obtained a mukarari[10] lease from their landlords. But it may, at the same time, be mentioned that the classification given in sec. 4 of the Bengal Tenancy Act, 1885, was not exhaustive. Firstly, in addition to the classes of raiyats mentioned therein, the Act defined another class of raiyat as "settled raiyat"[11] in section 20; secondly a raiyat paying a fixed quantity of produce as rent was also a raiyat at fixed rent[12] but there was no mention of settled raiyat and raiyat paying produce rent in the classification given in the Act.

Sec. 2. Raiyats at fixed rates.

Meaning of raiyats at fixed rates. - The expression "raiyats holding at fixed rate" was defined in sections 4(a) and 18 of the Bengal Tenancy Act, 1885 as "raiyats

---

9. The Bengal Rent Act, 1859, sec.3; The Bengal Act, 1869, sec.3.
10. 'mukarari' lease = a lease at a fixed rent (E.H.Whinfield, op.cit., p.6 f.n.(a).
11. Infra pp.114-15.
12. Dinanath v. Raja sati Prasad (1922) 72 I.C. 663 = 36 C.L.J. 220 = 27 C.W.N. 115; Manmatha v. Probodh (1922) 73 I.C. 416.

holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity". That class of raiyat was recognized at the Permanent Settlement of 1793.[13]

Turning now to the case law, it may be noted that the presumption under section 50[14] of the Bengal Tenancy Act, 1885 operated so as to convert the occupancy raiyats into raiyats at fixed rates. Thus where in a proceeding for record of rights under the provisions of the Act,[15] the settlement officer having found that certain raiyats were holding their lands at rates which had not been changed during the twenty years before the institution of the proceedings, recorded them as raiyats holding at fixed rates.[16] It was held that under section 50 of the Bengal Tenancy Act, the settlement officer was right in giving effect to the presumption that the raiyats were holding at fixed rates of rent and in recording them as "raiyats holding at fixed rates". A tenant held 50 bighas of land

---

13. The Bengal Rent Act, 1859, sec.3; The Bengal Act, 1869, sec.3; The Bengal Tenancy Act, 1885, sec.50(1); The report of the Land Revenue Commission, Bengal dated 21st March, 1940, vol.I, para.40.
14. Infra, pp.100-101.
15. The Bengal Tenancy Act, 1885, sec.106.
16. Dulhin v. Balla (1898) I.L.R. 25 Cal. 744 F.B; Kshirod v. Rajendra (1917) 38 I.C. 94.

for more than twelve years under a jungleburi lease[17] which provided for a progressive rate of rent and did not expressly provide that the interest of the tenant was to be heritable or perpetual, and it did not expressly exclude enhancement on any ground but expressly provided for enhancement on the ground of increase in the productiveness of the soil effected at the expense of the landlord. It was held[18] that the interest created by the lease was not covered by section 18[19] of the Bengal Tenancy Act and that the tenant was not a raiyat holding at fixed rates. Where a raiyati lease explicitly stated that it was granted upon a rent of Rs 5 a year, that the tenant would enjoy the land from generation to generation and that the landlord would not claim more rent than what was settled; it was held[20] that the lessee was a raiyat at fixed rates. In Golam Rahaman Mistri v. Gurudas,[21] a landlord granted a lease of certain land at a certain annual jama, with right of possession from generation to generation (putra putradi krame). In the body of the document there was at one

---

17. jungleburi lease = lease for clearing jungle; leases for reclamation and cultivation of waste lands (Secretary of State v. Gobind (1916) 21 C.W.N. 505 at 509.
18. Rajkumar v. Naya chatoo (1904) I.L.R. 31 Cal. 960
19. This section dealt with the incidents of holding at fixed rates.
20. Harimohon v. Atul Krishna (1913) 19 C.W.N. 1127.
21. (1922) 76 I.C. 586.

place an undertaking by the tenant to pay fixed rent and in another place he undertook to pay, in addition to the fixed rent, Road cess and Public work cess and any tax or additional amount that might be assessed by the Government in future in respect of the land of the tenancy. Lastly there was a restrictive clause under which the tenant undertook "not to excavate any ditch or tank, prepare bricks, construct pucca buildings or cut down trees without taking a written order expressing consent from the landlord". It was held[22] that the lease was intended to be a perpetual one at a fixed rent and constituted a transferable tenure, and that the restrictive clause did not modify the nature of the tenancy, and the use of the words putra putradi krame in a lease indicated that the lease was intended to be a perpetual one. In Eshaque v. Motilal[23], it was held that a recital in a kabuliat that the tenancy was a heritable one, descending from father to son and that the excess area found to be in possession of the tenant was to be assessed with rent at the rate mentioned therein was not sufficient to establish that the tenancy was one at a fixed rent. In the case referred to Suhrawardy J., in distinguishing the earlier case, observed:-

---

22. Ibid.,
23. (1924) 81 I.C. 1043 at 1044.

"The two points alone may not be sufficient to establish that the document created a raiyati. These with other circumstances may, no doubt, go a great way to establish the permanent nature of the tenancy. In Golam Rahaman Mistri v. Gurudas,[24] this condition, namely that the excess area is to be assessed with rent at the rate mentioned in the contract was present but there were other circumstances relying on which it was held that the tenancy was a tenancy at a fixed rent. This stipulation alone apart from other circumstances of each particular case would not establish that a tenancy is a tenancy at a fixed rent".

The total rent payable for the holding might be fixed or the rate of rent might be fixed though it might vary in consequence of variation in the area of the holding. Thus where rent was originally fixed at 2 annas per bigha and subsequently on discovery of excess lands, the additional area was also assessed at the same rate and it was agreed that on discovery of further excess the same would also be assessed at the same rate; it was held[25] that

---

24. (1922) 76 I.C. 586.
25. Amarnath v. Raja KrishnaDas (1921) 35 C.L.J. 138 at 139-40; Ramdayal v. Midnapore zemindary (1910) 15 C.W.N. 263.

the rate of rent was fixed in perpetuity at 2 annas per bigha.

We now turn to the raiyats paying as rent a fixed proportion of the produce. There was conflict of dicisions as to whether they come within the category of raiyats at fixed rates. In Thakooranee v. Bisheshur,[26] Peacock C.J. observed:- "By the term fixed rates of rent, I understand not merely fixed and definite sums payable as rent, but also rates regulated by certain fixed principles - such, for instance, as a certain proportion of the gross or of the net produce of every bigha, or such a sum of money as would be equal to such a proportion of the produce, or such a sum as would give to the ryot any fixed rate of profit after payment of all expenses of cultivation. Id certum est quod certum reddi potest is a maxim of law".

But in Mahamad Yacab Hossain v. Chowdhury Wahed Ali[27] it was held by E.Jackson J., (whose views were confirmed by a third judge, Trevor J., to whom the case went up for opinion[28]) that "no rate of bhaoli rent varying yearly in

---

26. (1865) B.L.R. sup. vol. 202 at 326 F.B.
27. (1865) 4 W.R. (Act X) 23.
28. 'bhaoli rent' = rent in kind.

amount with the varying amount of gross produce of the land, though fixed as to the proportion which it is to bear to such produce, is a fixed unchangeable rent of the nature alluded to section 4 of Act X of 1859. Moreover, it appears to me, that all rents in kind are transitory existing only so long as money rents, which it is the policy of the law to favour, can be introduced, and that it is only when the amount of rent or the portion of the gross produce payable by the tenant has been paid in money that section 4 of Act X becomes applicable". Bayley J., dissenting held[29] that "a contract to pay half in kind does not involve a varying rate. It is a fixed rate of half of what may be produced in kind. As to the contract, it is a fixed contract as much as if it were to pay half of Rs 100 or any other sum". The decision of Trevor and E.Jackson JJ., was followed in Thakur Prasad v. Syed Mahamad Baker[30], but disapproved in Ram v. Lachmi[31] by L.S. Jackson J., who when pressed with the decisions in Mahamad Yacab Hossain v. Chowdhury Wahed Ali[32] and Thakur

---

29. Mahamad Yacab Hossain v. Chowdhury Wahed Ali (1865) 4 W.R. (Act X) 23 at 24.
30. (1867) 8 W.R. (C.R.) 170.
31. (1870) 14 W.R. (C.R.) 388.
32. (1865) 4 W.R. (Act X) 23.

Prasad v. Syed Mahamad Baker[33], described in a graphic term the injustice of the rule favoured therein:-

"I confess I would have considerable difficulty in assenting to the rulings in these cases; because, if the rulings are correct, the legislature must have intended that ryots who have held land upon one principle, i.e., to say, upon one fixed ratio of division of the produce of their land with the landlord, from the time of the Permanent Settlement, would be entitled to no protection whatever, but would, after these 80 or 90 years, be subject to a suit for enhancement or for commutation of their rent at such money rates as the landlord might be enabled to prove. I can not believe that the legislature could have intended any such injustice to ryots in those parts of the country where the bhaolee system is prevalent, as it is in many parts of Behar. In those parts of the country, there being no such thing as a rate of rent in money, ryots holding from the time of the Permanent Settlement would have no protection whatever, unless the legislature meant to include under the words "rate of rent" the mode or principle of bhaolee payment".

In another case[34] it was held that an arrangement

---

33. (1867) 8 W.R. (C.R.) 170.
34. Miterjeet v. Toondun (1869) 12 W.R. (C.R.) 14 = 3 B.L.R. App. 88.

by which a certain rent in cash was to be paid in lieu of rent in kind, did not show a variation in the rate of rent, but was tantamount to saying that the money rate represented and was equivalent to what was paid before in another way. In Jotoo v. Basmutee,[35] Mukerjee J., observed: "I am not prepared to hold that a ryot, who has, since the Permanent Settlement, paid a certain fixed proportion of the produce of the land to the zemindar, can not say that his tenure is a holding in perpetuity at a fixed rent". A Full Bench of the Allahabad High Court in Hanuman v. Kauleswar,[36] held that "a rent in kind (bhaoli), which, though, it varies yearly in amount with the varying amount of the yearly produce, is fixed as to the proportion it is to bear to such produce, is a fixed rent within the meaning of section 3 of Act X of 1859". In the case referred to, the learned judges observed:-[37] "The quantity of produce delivered may vary in each year, but the rate or share remains the same, be it a fourth, a third or a half, as the case may be. The rate of rent does not vary, although its quantum or value may".

---

35. (1871) 15 W.R. 379 at 380.
36. (1876) I.L.R. 1 All.301 F.B., overruling Hanuman v. Ramjug (1874) N.W.P. (H.C.R.)371 which followed the Calcutta High Court Case of Mahamad Yacab Hossain v. Chowdhury Wahed Ali (1865) 4 W.R. (Act X) 23.
37. Hanuman v. Kauleswar (1876) I.L.R. 1 All. 301 at 302 F.B.

The point was elaborately discussed in Dinanath v. Raja Sati Prasad.[38] In that case some tenants instituted suits under the provisions of the Act,[39] against their landlords for the decision of disputes regarding entries which had been made in a finally published record of rights. The tenants had been recorded as settled raiyats under the respondants; they claimed that they were raiyats at fixed rates. In support of their contention, they produced rent receipts which showed that each of them had held at a uniform rent for over twenty years. The rent consisted partly of cash and partly of money value of a fixed quantity of paddy. In those circumstances the court of first instance held that section 50 of the Bengal Tenancy Act, 1885 was not applicable. In its opinion, the term 'rent' in that section did not include rent in kind. On appeal the special Judge adopted the same construction of section 50 and confirmed the decision of the Revenue officer. In the High Court, the tenants urged that section 50 had not been correctly interpreted by the court below. The relevant portion of that section provided as follows:-

"50. (1) Where a tenure-holder or raiyat and his predecessors-in-interest have held at a rent or rate of rent which has not been changed from the time of the

38. (1922) 72 I.C. 663 = 36 C.L.J. 220 = 27 C.W.N.115; also Manmatha v. Probodh (1922) 73 I.C. 416.
39. The Bengal Tenancy Act, 1885, sec. 106.

Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an a alteration in the area of the tenure or holding.

(2) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or raiyat and his predecessors-in-interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement".

The learned Judges observed that "this section must be read along with section 3(5)[40] which provides that, unless there is something repugnant in the subject or context, rent means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant. This definition is in no way repugnant to the subject or context of section 50, and the term 'rent' in that section may well be placed by its equivalent as given in section 3(5). This leads inevitably to the conclusion that the substantive rule formulated in section 50(1) and the presumption embodied in section 50(2) do not become inapplicable because a tenure-holder or raiyat holds at a rent payable partly in cash and partly in kind or

---

40. This clause was renumbered as clause (13) by section 129 of the Bengal Tenancy (Amendment) Act, 1928.

entirely in kind".

It was argued on behalf of the landlords that produce rents were not within the purview of section 50 of the Bengal Tenancy Act, because the Bill included another sub-section relating to rent-in-kind. While the Bill was under consideration an attempt was abandoned, which if successful would have inserted in the Act a clause giving effect to the view adopted in the majority of judicial opinions. The abandoned clause reads as follows:- "When a raiyat has paid as rent a fixed share or the value of a fixed share of the produce of the land, the rent or rate of rent shall not be deemed to have been changed within the meaning of this section, merely by reason of the amount paid having varied from year to year, or by reason of the rent having been commuted, with the consent of both the raiyat and his landlord, to a fixed money rent".[41] That provision was omitted at the final stage, as appears from the following passage in the Report of the Select Committee[42]:- "We have omitted from the section,

---

41. Bill prepared by the Rent Law Commission, 1880, sec.16, Exp.1; Bengal Tenancy Bill of 1883 as introduced in the Legislative Council, sec.16 = Selections, pp.156,303; C.D.Field, Digest, Article 37, Exp.1; The report of the Rent Law Commission, 1880, para.27.
42. The report of the Select Committee dated 12th February, 1885, sec.26 = Selections, p.405.

which enacts the well-known presumption arising from holding at a rent unchanged for twenty years, the sub-section which made the presumption applicable to produce rents, as opinions generally were opposed to it". Sir Steuart Bayley in explaining the reason of the omission in one of the debates in Council said:-[43] "The first alteration to be noticed is that we have omitted the provision making this presumption applicable to produce rents. It seemed clear to us that where the rent is paid in kind, although the proportion of the gross produce paid remains the same, yet by a self acting machinery this very fact discounts the rise in prices, and rents are thus of necessity enhanced or reduced as prices rise or fall. There is here no room therefore for the presumption".

This argument did not convince the learned Judges who observed:-[44]

"The omission of the clause left the Bill as it was, and that Bill, it can not be overlooked, contained a comprehensive definition of the term 'rent'. Act X of 1859 did not contain a definition of the term 'rent', and this opened up, as it is well-known, various

---

43. Extract from the Proceedings of the Council of the Governor General in India dated 27th February, 1885 = Selections, p.442.
44. Dinanath v. Raja Sati Prasad (1922) 36 C.L.J. 220 at 223-24 = 27 C.W.N. 115 = 72 I.C. 663.

opportunities for controversies of a recondite character. The legislature remedied this defect by the insertion of a definition of the term 'rent', in section 3(5) of the Bengal Tenancy Act - a definition which as Sir Arthur Wilson observed in Jotindra Mohun v. Jaroa Kumari[45], seems to express very clearly the meaning of the word 'rent', as it would be understood without any statutory definition. We need not speculate, whether the members of the Select Committee fully realised the effect of this definition on the other provisions of the Bill they had then under consideration. But this much is clear that, if they intended to alter the current of judicial opinion under the old law, they unquestionably failed to achieve their purpose by the mere omission of the clause we have mentioned. The result might have been different, if the term 'rent' in section 50 had not been replaced by the phrase 'money rent' which makes its appearance in section 28, 29, 30, 50, and 61". The learned judges then came to the conclusion[46] that in section 50, the term 'rent' could not be restricted to money rent and that it bore the meaning attributed to it in section 3(5) and that reference could not be made to

45. (1905) 10 C.W.N. 201 P.C.
46. Dinanath v. Raja Sati Prasad (1922) 36 C.L.J. 220 at 227 = 27 C.W.N. 115 at 121.

the report of the Select Committee. The Rent Law Commission, 1880 also expressed the view that a fixed proportion of the produce was a fixed rate within the meaning of the law.[47]

The matter is now clear that under the Bengal Tenancy Act, 1885 rent in kind was included in the words "rent or rate of rent". The expression "at fixed rates of rent" used in section 3 of the Rent Acts of 1859 and 1869 and the expression "rent or rate of rent fixed in perpetuity" used in sec. 4 and 18 of the Bengal Tenancy Act, 1885 meant substantially the same thing. The words "rate of rent" fixed in perpetuity were sufficiently wide to include "rate of rent in kind" fixed in perpetuity as well as fixed in proportion to the gross produce.

We may therefore, conclude that raiyats whose rent or rate of rent was fixed in perpetuity were raiyats at fixed rates. It did not matter whether the rent was payable in cash or partly in cash and partly in kind or entirely in kind.[48]

Mode of creation of holding at fixed rates. - A holding at fixed rates could be acquired by act of parties

---

47. Para. 27 of the Report; C.D.Field, Digest, Article 37, Exp.1.
48. Tafazzal v. Masalat (1934) 38 C.W.N. 797; Dinanath Raja Sati Prasad (1922) 36 C.L.J. 220 at 224; Manmatha v. Probodh (1922) 7 3.I.C. 416 at 418.

or by operation of law under section 50 of the Bengal Tenancy Act, 1885 on proof that the rent or rate of rent was not changed from the time of the Permanent Settlement.[49] A lease at a rent or rate of rent fixed in perpetuity could be granted by a proprietor or permanent tenure-holder in a permanently settled estates.[50]

Sec. 3. Occupancy raiyats

Meaning of occupancy raiyat. - Occupancy raiyats were defined in section 4(b) of the Bengal Tenancy Act, 1885 as "raiyats having a right of occupancy in the land held by them". The requisites of an occupancy right were laid down in section 6 of the Bengal Rent Act, 1859 and the Bengal Act, 1869 which declared:-

"Every ryot who shall have cultivated or held land for a period of 12 years shall have a right of occupancy in the land so cultivated or held by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same; but this rule does not apply to khamar, neej-jote, or seer land belonging to the proprietor of the estate or tenure and let by him on lease for a term, or year by year, nor (as respects the actual cultivator) to lands sub-let for a term, or year by year, by a ryot having a right of occupancy. The holding of the father or other person from whom a ryot inherits shall be deemed to be the holding of the ryot within the meaning of this section".

Nature of occupancy right. - The expression "right

---

49. Dulhin v. Bella (1898) I.L.R. 25 Cal. 744 F.B; Kshirod v. Rajendra (1917) 38 I.C. 94.
50. The Bengal Tenancy Act, 1885, sec.179.

of occupancy" was said to have been first created[51] by the legislature in the Bengal Rent Act, 1859. But strictly speaking the conception of the right of occupancy, as observed by high authorities, already existed from early times as the fundamental right or privilege of the superior class of raiyats known as khoodkasht raiyats or resident or hereditary cultivators. Sir John Shore in his celebrated Minute said:[52] "Puttahs to the khode khosht ryots, or those who cultivate the land of the village where they reside, are generally given, without any limitation of period; and express that they are to hold the lands, paying the rents from year to year. Hence the right of occupancy originates; and it is equally understood as a prescriptive law, that the ryots who held by this tenure, can not relinquish any part of the lands in their possession, or change the species of cultivation, without a forfeiture of the right of occupancy, which is rarely insisted upon; and the zemindars demand and exact the difference. I

---

51. Mahanth v. Janki, A.I.R. 1922 P.C. 142 at 144 = I.L.R. 1 Pat.340; Chandra Binode v. Ala Bux (1920) I.L.R. 48 Cal. 184 at 233 S.B; Thakooranee v. Bisheshur (1865) B.L.R. sup. vol. 202 at 326 F.B; Sarat v. Asiman (1904) I.L.R. 31 Cal. 725 at 735 = 8 C.W.N. 601; Jnanendra v. Harendra (1922) 87 I.C. 32 at 34.
52. Sir John Shore's Minute dated 18th June, 1789, para.406; Harington, Analysis, vol. III, p.437; W.W.Hunter, Bengal MS. Records, vol.I, pp.50-51.

understand also, that this right of occupancy is admitted to extend, even to the heirs of those who enjoy it". He again observed[53]:- "It is, however, generally understood that the ryots by long occupancy acquire a right of possession in the soil, and are not subject to be removed". We also know from Harington that "they had a privilege of keeping possession as long as they paid the rent stipulated by them[54]. Similarly Sir George Campbell said[55]:- "They had a moral claim to hold the land as long as they cultivated and paid their rent"[56]. The Commissioners of 1778 recorded: "Their right of possession, whether it arises from an actual property of the soil, or from length of occupancy, is considered as stronger than that of other ryots". Mr. E. Currie, while moving, on the 10th October, 1857 in the Legislative Council of India, the first reading of the Bill which afterwards became the Bengal Rent Act, 1859, said[57]:- "The Regulation recognized the right of all resident

---

53. Sir John Shore'sMinute dated 18th June, 1789, para.389; Chandra Binode v. Ala Bux (1920) I.L.R. 48 Cal. 184 at 227-28, S.B.; W.W.Hunter, Bengal MS. Records, vol.I, p.50.
54. Harington, Analysis, vol.III, p.460; A.Phillips, op.cit., p.13;
55. G. Campbell, Cobden Club Essay, p.161; A.Phillips, op.cit., p.14;
56. supra, pp.84-85.
57. C.D.Field, Landholding, p.743; Chandra Binode v. Ala Bux (1920) I.L.R. 48 Cal. 184 at 233-34 S.B.

raiyats to the occupancy of the lands cultivated by them so long as they paid the established rent. It declared that all resident raiyats or cultivators had a right of occupancy in the lands held or cultivated by them so long as they paid the rents legally demandable from them". Similar observation was also made in the Great Rent Case.[58] It is now evident that the right so created by the Act was not, however, a new right but was merely a recognition of the pre-existing rights enjoyed by the khoodkasht raiyats.

The expression "right of occupancy" was not defined anywhere in the Bengal Tenancy Act, 1885. In the absence of any definition it was understood in its ordinary sense as the right to maintain occupation without let or hindrance from the external world. Field defined it as "the privilege of continuing to hold the land, in which such right has been acquired, as long as the rent legally demandable for the same is paid".[59] According to Finucane and Ameer Ali a right of occupancy might be described as "a permanent lease, subject to the payment of a fair rent, unless held at a fixed rent".[60]

---

58. Thakooranee v. Bisheshur (1865) B.L.R. sup.vol.202 at 214, 224 F.B.
59. C.D.Field, Digest, p.39.
60. M.Finucane and Ameer Ali, op.cit., p.121.

It was held[61] that under the Bengal Rent Act, 1859 the right of occupancy was rather of the nature of a personal privilege than a substantive proprietary right. But under the Bengal Tenancy Act, 1885,[62] it was held that an occupancy raiyat enjoyed a substantial right in the land and his interest could not be appropriately described as a mere personal right or privilege. Thus he could not contract surrendering his right of occupancy and even a compromise decree passed in accordance with the provisions of the Act[63] could not destroy such a right.[64] The right of occupancy was a statutory right; it was inherent in the status of a raiyat and could not be acquired either by grant from the landlord or by contract.[65] On the other hand if a settled raiyat of a village took some land for the purpose of cultivation for a term of years with the express stipulation that he would not hold it after the expiration of the term, he did not become a trespasser after the expiry of the term. He acquired an occupancy right in the land

---

61. Nurendra v. Ishan (1874) 22 W.R. 22 at 27 F.B; Edgell v. Biswanath (1921) 62 I.C.59.
62. Chandra Binode v. Ala Bux (1920) I.L.R. 48 Cal. 184 at 246, 247, 249, 250 S.B.
63. The Bengal Tenancy Act, 1885, sec. 147A(1).
64. Sheikh Nasarat v. Kalidas (1919) 54 I.C. 750 at 751.
65. Kesho v. Parmeshri (1923) 71 I.C. 902 at 910 affirmed in Bindeswari v. Kesho (1926) 31 C.W.N. 74 at 75 P.C.

by virtue of his status as a settled raiyat of the village and became a tenant on the land.[66] If a zemindar brought a settled raiyat upon the land and gave him an interest in that land for the purpose of cultivation for however short a time, and even if the crop to be cultivated were of a limited kind, the provisions of section 21[67] of the Act might apply, so as to enable the raiyat to acquire occupancy rights in the land.[68] The occupancy right being a statutory right, a temporary holder or any limited owner[69] could do nothing to prevent the acquisition of such right save by legal process. Consequently the right might be acquired by a raiyat under a Hindu widow or any other temporary holder, and that could not be questioned by a reversioner.[70]

The topic now leads us to consider (a) who could acquire occupancy right, (b) land in which occupancy right

---

66. Dwarka v. Nalinee (1937) I.L.R. 2 Cal. 689 at 692.
67. Infra, p.114.
68. B.N.W.R. v. Janki, A.I.R. (1936) Pat. 362 at 369.
69. 'limited owner' = The usual "limited owner" was a Hindu widow who took an interest in the estate of her husband subject to divesting in favour of the next heirs on her death or remarriage. She was entitled to the income but could not alienate the corpus beyond the term of her estate except for necessity or benefit of the estate.
70. Ichhyamovi v. Kailash (1913) 18 C.W.N. 358; Harmanoge v. Ganour (1916) 37 I.C. 360.

could be acquired, (c) how occupancy right could be acquired and (d) extinguishment of occupancy right.

Who could acquire occupancy right. - It was only a raiyat who could acquire an occupancy right under section 6 of the Rent Acts of 1859 and 1869 and under sections 19 and 21 of the Bengal Tenancy Act, 1885.[71] In this regard the learned Judges of the Judicial Committee of the Privy Council observed:-[72]

"It seems to us that if there is anything clear in regard to a right of occupancy as defined in Act X of 1859, it is a right accruing to a raiyat and not to persons who are middlemen. It would be, we think, a monstrous straining of the law to apply the term 'right of occupancy' to a middleman".

Section 19 of the original Bengal Tenancy Act, 1885 declared:-

"Every tenant who, immediately before the commencement of this Act has by the operation of any enactment by custom or otherwise, a right of occupancy in any land, shall when that Act comes into force, have a right of occupancy in that land".

---

71. Supra, p.106.
72. Midnapore zemindary v. Naresh (1920) I.L.R. 48 Cal. 460 at 467 P.C.

That section was subsequently modified after the partition of Bengal[73] by the Western Bengal Tenancy (Amendment) Act, 1907, and the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 and again by sec. 19 of the Bengal Tenancy (Amendment) Act, 1928. After the last amendment it stood thus:-

"19. Every raiyat who, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, has by the operation of any enactment by custom or otherwise, a right of occupancy in any land, shall, when that Act comes into force, have a right of occupancy in that land".

That section preserved in express terms all rights of occupancy already acquired before the commencement of the Bengal Tenancy Act, 1885 either under the provisions of any of the previous enactments, under custom or otherwise[74]. But the courts went further and held[75] that, apart from the

---

73. The province of Eastern Bengal and Assam, created in October 16, 1905, ceased to exist in April 1, 1912 when Eastern and Western Bengal were reunited and Assam became a separate province. (vide Notification No. 2832 of the Government of India dated 1st September, 1905 = The Gazette of India dated 2nd September, 1905, part I, p.636 and Notification No. 291 of the Government of India dated 22nd March, 1912 = The Assam Gazette dated 3rd April, 1912, part I, pp. 1-2).
74. Ram Kumar v. Ram Newaj (1904) 8 C.W.N. 860; Ichhamoyi v. Kailash (1913) 18 C.W.N. 358 at 359; Secretary of State v. Gobind (1916) 21 C.W.N. 505 at 506 and 510; Lakhi v. Hamid (1917) 27 C.L.J. 284; Bhajan v. Balai, A.I.R. 1923 Cal. 375.
75. Hurry v. Nursingh (1893) I.L.R. 21 Cal. 129.

provisions of section 19, where a right of occupancy had been acquired under the Bengal Act, 1869 which was repealed by the Bengal Tenancy Act, 1885, such a right was not forfeited by the repeal, there being nothing in the new enactment to deprive any person of a statutory right which had been actually acquired.

Section 21 of the Bengal Tenancy Act, 1885 provided as follows:-

"21. (1) Every person who is a settled raiyat of a village within the meaning of section 20 shall have a right of occupancy in all lands for the time being held by him as a raiyat in that village.

(2) Every person who being a settled raiyat of a village within the meaning of ~~the~~ section 20, held land as a raiyat in that village at any time between the 2nd day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law in force; but nothing in this section shall affect any decree or order passed by a court before the commencement of this Act".

According to section 21 of the Act noted above, a settled raiyat acquired a right of occupancy. A settled raiyat was a creature of the legislature and not of custom or customary law. Section 20 of the Bengal Tenancy Act, 1885 made "every person who for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate

in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village". A person should be deemed to have continuously held land in a village, notwithstanding that such village was defined, surveyed and recorded as, or declared to constitute a village at a date subsequent to the commencement of the period of twelve years.[76] It was only necessary that he should hold land in a village continuously for 12 years, though the particular land held by him might be different at different times.[77] He might cultivate the land either by himself or jointly with others for the whole period or part of the time.[78] He was entitled to add to his own occupation the period during which the holding was in the possession of the person from whom he derived title by inheritance, but not by purchase.[79] The status once acquired was not lost by mere abandonment of the holding and removal from the village unless the absence from the village lasted for more than a year.[80] If

---

76. The Bengal Tenancy Act, 1885, sec.20(1A) as introduced by the Amending Act of 1925.
77. The Bengal Tenancy Act, 1885, sec.20(2).
78. Ibid., sec.20(4).
79. Ibid., sec.20(3); The report of the Rent Law Commission, 1880, para. 29.
80. The Bengal Tenancy Act, 1885, sec.20(5); The report of the Select Committee on the Bill of 1883 dated 14th March, 1884, para. 14 = Selections, p.241.

a raiyat holding land in a particular village being evicted by his landlord, recovered possession under the provisions of sec. 87[81] of the Act, he continued to be a settled raiyat of the village, notwithstanding that he was out of possession for more than a year.[82] Every raiyat was presumed to be a settled raiyat until the contrary was proved.[83]

Under the Rent Acts of 1859 and 1869, it was necessary for a raiyat to have been in occupation of the same land for the statutory period of twelve years before he could acquire a right of occupancy, and if he took up any fresh land in the village, the fact that he had some other land in the village for more than 12 years, did not give him any right of occupancy in his new acquisition till he had held it for 12 years.[84] Landlords sometimes took advantage of the law, and prevented raiyats from acquiring a right of occupancy by changing the lands of their holdings before the expiration of the statutory period.[85] This device had been put a stop to by the Bengal Tenancy Act, 1885 which did not make any distinction between a resident and non-resident raiyat. Every person who held any land in a

---

81. Infra, pp.246-47.
82. The Bengal Tenancy Act, 1885, sec.20(6).
83. Ibid., sec.20(7).
84. Amar v. Bakshi (1874) 22 W.R. 228; M. Finucane and Ameer Ali, op.cit., p.132.
85. Despatch to Secretary of State No. 6 dated 21st March, 1882, para. 54 = Selections, p.15; M.Finucane and Ameer Ali, op.cit., p.132.

village for 12 years was, under this Act, a settled raiyat of the village, whether he resided in it or not. It was not necessary that he should continuously hold the same land. A person might be a settled raiyat in more villages than one.[86]

The privileges given to the settled raiyat under the Bengal Tenancy Act, 1885 were the same as regards the right of occupancy as those possessed by the old khoodkasht raiyat.[87] In this regard the Bengal Government said:-

"One of the privileges of the khud kasht raiyat was to hold fresh land in the same village on the same tenure as the old; and in those times, there was a large margin of the waste in all villages, the resident cultivator had a fresh land at his door. There is now but little margin of waste in any village of the settled districts, and therefore the raiyat, if he wants to add to his holding, can not always succeed in doing so. That he should, however, if successful in his quest (and he can only succeed with the consent of his landlord), hold such additional land in the same estate, by the same title as his original

---

86. M. Finucane and Ameer Ali, op.cit., p.132.
87. The report of the Bengal Government dated 27th September, 1883, para. 11 = Selections, p.222.

holding, is only a rational development of an old customary law of the country to suit modern wants".

There was a difference between an occupancy raiyat and a settled raiyat. An occupancy right could be acquired by purchase but the right of a settled raiyat was acquired only by holding land continuously in the village for 12 years. The mere fact, that a person had an occupancy holding in a village, did not give him a right of occupancy in his other holdings in the same village, unless he was also a settled raiyat. But a settled raiyat obtained a right of occupancy directly he took up any fresh land. The status of a settled raiyat could not be transferred. This was the only distinction between a settled raiyat and an occupancy raiyat.[88] Hence it was observed by Maclean C.J. and Rampini J., that "every settled raiyat has a right of occupancy, but every occupancy raiyat is not necessarily a settled raiyat". The distinction between them can also be gathered from circular No. 1 of October, 1902 of the Board of Revenue, Bengal, issued to the settlement officers where it was stated:-[89]

---

88. Kuldip v. Chatur (1898) 2 C.W.N. cccii at ccciii (notes); Midnapore zemindary v. Hrishikesh (1914) I.L.R. 41 Cal. 1108 at 1123 F.B.
89. Board's Settlement Manual, Part II, chapter III, pp.346, 98, quoted by R.F.Rampini, Bengal Tenancy Act, (Calcutta: S.K. Lahiri & Co., 1918, Sixth Ed.) p.103.

"A raiyat who has held any land in a village for 12 years by himself or partly through the person from whom he has inherited, is a settled raiyat of that village. He has the occupancy right not only in that land but also in all other lands in that village forming part of his holding or which he may at any time add to his holding. His status as a settled raiyat passes to his heir, but it cannot be sold. Thus all occupancy raiyats who have acquired the occupancy right through the occupation of land for 12 years, or by inheritance from one who held for that period, should be recorded as settled raiyats. The only remaining class of occupancy raiyats are those who have purchased the occupancy right, but have not held the land to which it is attached for 12 years, or who have inherited from such purchasers, the term of 12 years from the purchase being still unexpired. These alone should be recorded as occupancy raiyats."

We shall now consider whether a raiyat at fixed rates could acquire a right of occupancy or the status of a settled raiyat. According to the wording of section 6[90] of the Bengal Rent Act, 1859 a raiyat at fixed rates, if he was in possession of the land as a raiyat continuously for 12 years, became an occupancy raiyat as well. We find

---

90. Supra, p.106.

that the Bengal Land Revenue Sales Act, 1859[91] speaks of occupancy raiyats at fixed rates. We have noted above that sec. 19 of the Bengal Tenancy Act, 1885 did not affect any occupancy right acquired before its commencement. So a raiyat at fixed rates who had already acquired occupancy right continued to retain it under the Bengal Tenancy Act. But decisions were conflicting as to whether a raiyat at fixed rates would acquire a right of occupancy or the status of a settled raiyat under the Act. In Bhutan v. Surendra[92] it was held that under the Bengal Tenancy Act, 1885 a raiyat at fixed rates could not acquire the status of a settled raiyat or a right of occupancy by occupation, of the land for twelve years. But in Sarbeswar v. Bejoychand[93] and Tarani v. Srish[94] it was held that a raiyat at fixed rate might become a settled raiyat of the village under section 20 of the Act and thus acquired a right of occupancy within the meaning of section 21. The conflict of decisions was, however, set at rest by the Amending Act of 1928, which inserted a new clause (c) to sub-section (1) of

---

91. Sec.37, Proviso.
92. (1909) 13 C.W.N. 1025.
93. (1921) 26 C.W.N. 15 = I.L.R. 49 Cal. 280.
94. (1928) 32 C.W.N. 587.

section 18 which clearly laid down that a raiyat at fixed rates "shall be deemed to be a settled raiyat of the village, if he complies with the conditions set forth in section 20"; but "the provisions of sections 23A to 38,[95] (both inclusive) shall not apply to raiyats holding at fixed rates, even though such raiyats have a right of occupancy in the lands of their holdings".[96]

An under-raiyat could, under the Rent Acts of 1859 and 1869, acquire a right of occupancy in land sub-let to him otherwise than for a term of less than 12 years or from year to year.[97] In Ramdhun v. Haradun[98] Markby J., observed:-

"Sec. 6 does not exclude from the acquisition of the right of occupancy those persons who hold from ryots, but only those persons who hold from ryots themselves having no right of occupancy".

But ordinarily an under-raiyat could not acquire a right of occupancy as he generally held land for a term or from

---

95. These sections dealt with some of the incidents of occupancy right.
96. The Bengal Tenancy Act, 1885, sec.18(2); Shib... v. Panchanan (1935) 64 C.L.J. 71.
97. Report of the Rent Law Commission, 1880, para.31; H.Bell, Law of Landlord and Tenant (Calcutta: Fred. Lewis, Central Press Co., 1870) p.16; The Bengal Rent Act, 1859, sec.6; The Bengal Act, 1869, sec.6; S.C.Mitra, op.cit., p.308.
98. (1869) 12 W.R. 404 at 405.

year by year.[99] The Bengal Tenancy Act, 1885 made no provision for the acquisition of the right by an under-raiyat, as it manifestly tended to take away from the raiyat with right of occupancy some portion of the privilege that the law conferred upon him. The existence of the same sort of right in two persons holding the same piece of land, one claiming under the other was considered in itself an anomaly. Accordingly the Bengal Tenancy Act, 1885 left the acquisition of an occupancy right by an under-raiyat to custom or usage.[1] The Amending Act of 1928 gave statutory recognition to that customary right.[2]

Under the Rent Acts of 1859 and 1869, there were conflicts of opinion as to whether an indigo concern or firm could acquire a right of occupancy. In H.H. Cannan v. Kylash[3] Macpherson J., observed that "an indigo concern or firm has no corporate or legal existence, so far as the question of right of occupancy is concerned, which can only

---

99. Domuncollah v. Mahmondie (1869) 11 W.R. 556; S.C.Mitra, op.cit., p.308.
1. Akhil v. Hasan (1913) 19 C.W.N. 246 at 247; Gopal v. Tapai (1918) I.L.R. 46 Cal. 43; The Bengal Tenancy Act, 1885, sec. 183, ill.(2) and sec.113(1).
2. Ibid., sec.48G.
3. (1876) 25 W.R. 117.

be recognized in particular individuals". Similarly in Rai Komul v. J.W. Laidley,[4] it was held that "a firm of capitalists, taking a lease of lands from a zemindar and transmitting their rights to the changing members of the firm, can not by any length of occupation acquire occupancy rights under section 6 of Act X of 1859 or Bengal Act VIII of 1869". In delivering the judgement of the Court Jackson J.,[5] observed:-

"It appears to me, that in point of fact to apply the terms of section 6 to a holding, such as the present, would be to extend the meaning of section 6 to a most inordinate and dangerous degree. It is no doubt the case that, when a ryot holds land which he may cultivate, and perhaps for some time did cultivate, the circumstance that he has sub-let that land to an under-tenant does not deprive him of the right of occupancy, or prevent such a right growing up. But the case is altogether different when the tenure is of such a nature that it could not be within the means of occupancy or cultivation of a particular ryot, and here the fact is that there is no particular ryot. Here is an association of persons constituting a firm who have

4. (1879) I.L.R. 4 Cal. 957.
5. Ibid., p.960.

a large capital, and who ... devote their energy to the development of the soil and for the benefit of the country and also for their own benefit, and in respect of such a body, there is also an authority directly bearing on the case. In the case of H.H. Cannan v. Kylash[6] decided by Mr. Justice Macpherson and my brother Morris, it was expressly held that the Agra Bank as the representative of an indigo concern or firm could not be regarded as entitled to plead a right of occupancy.....In those observations we concur, as it would be impossible, we think, to hold that a firm or partnership could take the grant of land and by arrangement amongst themselves, continuing for a series of years by changes in the partnership, hand over the land from one person to another under the guise of a right of occupancy. What the firm of Robert Watson and Co., took from the zemindar in this case was not a ryot's tenure for the purpose of ordinary agricultural use. It was a tract of land amounting to an estate to be worked by them by means of capital for the purpose of carrying out a particular speculation. It appears to me

---

6. (1876) 25 W.R. 117.

that neither the terms of Act X of 1859 nor of the Bengal Act VIII of 1869 contemplate the right of occupancy growing up in such a case as this".

But in Laidley v. Gour[7], Field J., did not follow the decision of the two cases noted above. With reference to the first case learned judge said that "The report does not show the particular facts of the case, with reference to which these observations of the learned judge were made. We do not know who were the persons who constituted the indigo concern or firm, or whether their names were upon the record, or whether there was any evidence to show that these persons had held for twelve years after they had obtained possession". With reference to the second case the learned Judge observed:- "It is clear from the patta given at page 958 that this was a case of an ijara[8] lease, and that it was not like the present case, which is the case of jotedari lease, that is a cultivating lease. That being so, any observations that were made in the judgement in that case with respect to the rights of a ryot were obiter dicta ... and are not binding as a precedent". After distinguishing the earlier two cases the learned Judge held that "the grantees, under the pattahs being pattahs for cultivation, pattahs of the nature of ryoti pattahs, could

---

7. (1885) I.L.R. 11 Cal. 501.
8. ijara lease = a lease for farming rent; a lease of an interest intermediate between the zemindar and the cultivator (Laidly v. Gour (1885) I.L.R. 11 Cal. 501 at 506.

have acquired a right of occupancy".

Now the question is whether an association or partnership growing indigo might acquire the right of occupancy under the Bengal Tenancy Act, 1885. We have seen before[9] that the Act laid down that every person who held land as a raiyat acquired, under certain circumstances, the right of occupancy. The word 'person' under sec. 3(32) of the General Clauses Act, 1899 included "any company, or association or body of individuals whether incorporated or not". It was also held[10] that the cultivation of indigo and rearing of tea plants[11] were agricultural purposes. It, therefore, followed that an association of persons or partnership growing indigo or tea, whether incorporated or not, was a person and so capable of holding land. In this regard Mitra in his Tagore Law Lectures said:-[12]

"No doubt the word 'raiyat' ordinarily carries with it the idea of poverty, ragged clothes, and miserable hovels; but I suppose the law never intended that the privileges of occupancy right should be attached only to want and destitution, and not to wealth and palatial

---

9. Supra, pp.114-15.
10. Surendra v. Hari (1903) 9 C.W.N. 87 = I.L.R. 31 Cal.174.
11. Pravat v. Bengal Central Bank (1938) 42 C.W.N. 761.
12. S.C. Mitra, op.cit., pp.311-12.

buildings. If a firm cultivating indigo or tea continues to have the same members and to occupy the same piece or pieces of land or hold land in the same village for more than twelve years, it should have the right which the law has created for the benefit of cultivators. The Bengal Tenancy Act, in section 5, read along with section 2 of the General Clauses Act (1 of 1868), clearly indicates that an association of persons or a firm is as much capable of acquiring the right as the poorest cultivator of the soil".

The landlord himself could not, by cultivating his own land, acquire a right of occupancy in the land so cultivated by him.[13] In the words of Sir Steuart Bayley - "when the occupancy right in the holding falls into the

---

13. Mitturjeet v. Fitzpatrick (1869) 11 W.R. 206; Read v. Sreekishen (1871) 15 W.R. 430; Bool v. Lutho (1875) 23 W.R. 387; Lal v. Solano (1883) I.L.R. 10 Cal. 45; Radha v. Rakhal (1885) I.L.R. 12 Cal. 82; Kishen v. Rajah, unreported appeal No. S.A. 852 of 1877 decided on 25th February, 1879 quoted in Lal v. Solano (1883) I.L.R. 10 Cal. 45 at 48; Ram v. Mohamed (1898) 3 C.W.N. 62; The Bengal Tenancy Act, 1885, sec.22(1); Notes on clause 8 of the Western Bengal Tenancy (Amendment) Bill, 1906; Report of the Select Committee of the Bill of 1906 dated 6th March 1907, para. 12; Notes on clause 10 of the Eastern Bengal and Assam Tenancy (Amendment) Bill, 1907; The Report of the Select Committee of the Bill of 1907, dated 9th March, 1908, para. 6.

landlord's hands, it ceases to exist"[14]. Under the Rent Acts of 1859 and 1869, there was no express provision regarding the acquisition of occupancy rights by the landlord. The principle that the interests of the lessor and the lessee of immoveable property vested in one and the same person by operation of law or by voluntary transfer so that the subordinate right became merged in the superior right, was enunciated in a number of rulings[15] previous to the Bengal Tenancy Act, 1885. In Lal v. Solano[16], it was observed:-

"The right of occupancy must be acquired against somebody and if a ryot is in possession of land in a double capacity both as a ryot and as a malik[17], it is almost impossible to conceive how he can, under the circumstances, acquire a right of occupancy against himself. Therefore a reasonable view of the law is that, during the time a ryot remains in possession of the land in such double capacity, the operation of the acquisition of the right of tenancy remains in abeyance".

---

14. Sir Stewart Bayley's speech dated 27th February, 1885 in moving that the Report of the Select Committee be taken into consideration = Selections, p.447.
15. Mitturjeet v. Fitzpatric (1869) 11 W.R. 206; Read v. Sreekishen (1871) 15 W.R. 430; Bool v. Lutho (1875) 23 W.R. 387; Lal v. Solano (1883) I.L.R. 10 Cal 45; Radha v. Rakhal (1885) I.L.R. 12 Cal. 82.
16. (1883) I.L.R. 10 Cal. 45 at 49.
17. 'malik' = owner, proprietor.

As to the effect of acquisition of an occupancy right by a landlord, Garth C.J., said:-[18]

"We think this view is contrary both to the letter and the spirit of the Rent Law.[19] A man can not occupy the double character of landlord and ryot, or make a pretence of paying rent to himself for the purpose of acquiring an occupancy right against other people". The learned chief Justice was of opinion that a raiyati holding would merge in the proprietary interest after the purchase of the holding by the landlord.[20] In Radha v. Rakhal it was held that "when the zemindar acquires the land by purchase and takes possession, even in the benami[21] of a third party, seeing that he can not pay rent to himself, the right is is gone and cannot subsequently be revived".

The Bengal Tenancy Act, 1885 followed the same principle.[22] The Select Committee of the Bill observed that

---

18. Kishen v. Rajah, S.A. No. 152 of 1877 decided on 25th February, 1879 quoted in Lal v. Solano (1883) I.L.R. 10 Cal. 45 at 48 = 12 C.L.R. 559 at 562.
19. The Bengal Rent Act, 1859; The Bengal Act, 1869.
20. (1885) I.L.R. 12 Cal. 82.
21. 'benami' = in the name of another. Especially during the Muslim ascendancy in India, it became a common practice for an owner of property to place it under the nominal ownership of another, either because that other was more likely to be able to resist attempts to dispossess him or because he had other reasons for wishing to conceal his interest. The transfer was called benami and the ostensible owner the benamdar. In the British period he was regarded as a bare trustee and would be compelled to deliver the property to the beneficial owner by suit.
22. The report of the Select Committee dated 14th March, 1884, para. 15 = Selections, p.242.

"if the landlord of a raiyat having a right of occupancy acquires the interest of a raiyat by purchase or otherwise, the occupancy right shall cease to exist, but that nothing in this provision shall prejudicially affect the rights of any third person". The same view was expressed by the Bengal Government in its report to the Government of India.[23]

Accordingly the Bengal Tenancy Act, 1885 dealt with the acquision of a raiyat's interest by the sole landlord in sub-sec. (1) of section 22 which ran thus:-

"22. (1) when the immediate landlord of an occupancy holding is a proprietor of permanent tenure-holder, and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, the occupancy right shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person".

The object of that sub-section was to extinguish the inferior interest and to deprive the landlord of the option of keeping the inferior interest alive for any purpose of his own. But the draftsmanship was defective. It was held in several cases[24] that, when the interest of an occupancy

---

23. The report of the Bengal Government dated 15th September, 1884, para. 23 = Selections, p.354.
24. Sitanath v. Pelaram (1894) I.L.R. 21 Cal. 869 at 871; Jawadul v. Ram (1896) I.L.R. 24 Cal. 143; Miajan v. Minnat (1896) I.L.R. 24 Cal. 521; Ram v. Kachu (1905) I.L.R. 32 Cal. 386 F.B.

raiyat became united with the entire interest of his immediate landlord in the same person, [25] the right of occupancy ceased to exist but the holding was not extinguished. To nullify the effect of these rulings, section 22 was amended by the Western Bengal Tenancy (Amendment) Act, 1907 and by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908. In the notes on clauses of the Bills of 1906 and 1907 it was stated:-[26]

"The object of this amendment of section 22 is to counteract the ruling of the High Court in Jawadul Huq's case[27] and the Full Bench ruling in Ram Mohan v. Sheikh Kachu.[28] These decisions lay down a rule opposed to the policy of the authors of Act VIII of 1885, which was to discourage the acquisition of occupancy holdings by the landlords". Similar opinion was also expressed by the Select Committee of the Bills of 1906 and 1907.[29]

---

25. 'holding' means a parcel or parcels of land or an undivided share thereof, held by a raiyat or an under-raiyat and forming the subject of a separate tenancy. (The Bengal Tenancy Act, 1885, sec. 3(5); before the Amending Act of 1928, it was clause (9)).
26. Notes on clause 8 of the Western Bengal Amending Bill, 1906; Notes on clause 10 of the Eastern Bengal and Assam Amending Bill, 1907.
27. (1896) I.L.R. 24 Cal. 143.
28. (1905) I.L.R. 32 Cal. 386 F.B.
29. The report of the Select Committee of the Bill of 1906, para. 12; The report of the Select Committee of the Bill of 1907, para. 6.

After the amendment by the two provinces, sub-section (1) of section 22 stood as follows:-

"22. (1) When the immediate landlord of an occupancy holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, such person shall have no right to hold the land as a tenant,[30] but shall hold it as a proprietor or permanent tenure-holder (as the case may be), but nothing in this sub-section shall prejudicially effect the rights of any third person".

The effect of the amendment was that when the superior landlord purchased an occupancy holding under him, not only did the occupancy right cease but the raiyati also ceased.

This sub-section was again amended by the Bengal Tenancy (Amendment) Act, 1928. In that amendment the version of the Eastern Bengal and Assam (Amendment) Act, 1908 was followed. In other words the words "as a raiyat" were substituted for the words "as a tenant" in sec. 22(1).

Now we pass to a consideration of the position of a co-sharer landlord. One co-sharer of a landlord's interest could not acquire a right of occupancy by holding land and

---

30. The word 'raiyat' was inserted in place of 'tenant' by the Eastern Bengal and Assam Amending Act, 1908. This was the only difference in the amendment of sec. 22(1) by the two provinces.

paying a proportionate share of rent to the other co-sharers.[31] Neither could he do so by holding land with the permission of the other joint owners, the latter holding other lands by arrangement.[32] But in Kalee v. Shah[33] Jackson J., observed that "I am not prepared to hold that in no case can a co-sharer in an estate be a tenant of another co-sharer". According to the learned judge the question whether the parties were landlord and tenant was a question of fact and not of law. Similarly in Mookta v. Koylash[34], it was held that a holding for 12 years under one of several co-proprietors gave a right of occupancy under section 6 of the Rent Acts of 1859 and 1869, provided the tenant paid rent; he might, in the absence of fraud, make payment to such of the co-proprietors as he chose.

But sec. 22(2) of the original Bengal Tenancy Act, 1885 prevented the acquisition of an occupancy right by a co-sharer landlord. That sub-section ran as follows:-

"22. (2) If the occupancy right in land is transferred to a person jointly interested in the land as

---

31. Report of the Select Committee dated 12th February, 1885, para. 14 = Selections, p.403; The original Bengal Tenancy Act, 1885, sec.22(2).
32. Roghoobun v. Bishen (1865) 2 W.R. (Act X) 92.
33. (1869) 12 W.R. 418 at 422.
34. (1867) 7 W.R. 493.

proprietor or permanent tenure-holder, it shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person".

But it was held in several cases noted above that when an occupancy right was transferred to a person jointly interested in the land as proprietor, the occupancy right ceased to exist but the holding did not cease to exist. The result was that the purchasing co-sharer landlord became a raiyat. What was his status? If he became a non-occupancy raiyat, he was entitled to acquire the status of an occupancy raiyat by 12 years' occupation. He could not be an under-raiyat. The land being raiyati, the incidents of a landlord's private land could not attach to it. Such a tenancy would certainly be of an anomalous character and one not recognised in the Act. At this stage the legislatures of both the provinces intervened and amended sub-section (2) of section 22. The Western Bengal section ran thus:-

"22. (2) If the occupancy right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, he shall be entitled to hold the land subject to the payment to his co-proprietors or joint permanent tenure-holders of the shares of the rent which may be from time to time payable to them; and if such transferee sub-lets the land to a third person, such third person shall be deemed to be a tenure-holder or a raiyat, as the case may be, in respect of the land".

The Eastern Bengal and Assam section ran as fdlows:-

"22. (2) If the occupancy right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, such person shall have no right to hold the land as a raiyat, but shall hold it as a proprietor or permanent tenure-holder, as the case may be, and shall pay to his co-sharer a fair and equitable sum for the use and occupation of the same".

The Western Bengal version could not extinguish a tenancy or holding and left the status of the purchasing co-sharer landlord uncertain. The Eastern Bengal version made it clear that a purchasing landlord's possession should be the exclusive possession of a co-sharer proprietor or tenure-holder as the case might be, and removed the difficulty that might be caused by the use of the word 'rent', which created an ambiguity as to the status of the purchasing co-sharer.

Ultimately the Bengal Tenancy (Amendment) Act, 1928 changed the law and enabled a co-sharer landlord not only to hold the land in the estate but also to have the right of occupancy in such land, except where he purchased the holding in execution of a rent decree or a certificate for rent. After the amendment of 1928 sub-section (2) of section 22 stood as follows:-

"22. (2) Nothing in this section shall prevent the acquisition by transfer, succession or in any other way whatever, of the holding of an occupancy raiyat or share or portion thereof, together with the occupancy rights therein by a person who is, or becomes, jointly interested in the lands as a proprietor or a permanent tenure-holder:

Provided that a co-sharer landlord who purchases a holding of a raiyat at a sale in execution of a rent decree or of a certificate under this Act shall not hold the land comprised in such holding as a raiyat but shall hold the land as a proprietor or tenure-holder, as the case may be, and shall pay to his co-sharer a fair and equitable sum for the use and occupation of the same. The rent payable by the raiyat to the other co-sharer landlords at the time of the transfer shall be regarded as the fair and equitable sum until otherwise determined in accordance with the principles of this Act regulating the enhancement or reduction of the rents of occupancy raiyats".

In para. 8 of the Statement of objects and reasons of the Bill of 1928 it was stated:-[35]

"In view of the provision now made for the improvement of the rights of under-raiyat, the Select Committee's view[36] that a raiyati interest purchased by a co-sharer landlord should not merge, but that such landlord may hold the raiyati interest in his own estate or tenancy as a raiyat has been accepted.....The reasons for these changes have been explained in the notes on clauses". In the notes on clauses of the Bill of 1928, it was explained as follows:-[37]

"The existing section 22 prevents any landlord from holding lands in his own estate or tenure as a raiyat.

---

35. Calcutta Gazette dated July 12, 1928, part IV, p.94.
36. The report of the Select Committee on the Bill of 1926, clause 17 = Calcutta Gazette dated July 22, 1926, part IV, p.61.
37. Clause 20 of the notes on clauses = Calcutta Gazette dated July 12, 1928, part IV, p.98.

This was considered unfair in the case of co-sharer landlords. So long as under-raiyats have substantial rights there is no reason why co-sharer landlords should not hold, as raiyats, holdings of which they have come into possession otherwise than by exercise of their own legalpowers to realise rents in arrear. Hence the existing sub-section (2) of section 22 takes its place. The new sub-section (2) in section 22 emphasises the change in the law in favour of co-sharer landlords".

An ijaradar or farmer of rent, by whatever name he might be called, could not, during the period of his lease, acquire a right of occupancy in any land comprised in his ijara or farm.[38] But a person having a right of occupancy in land did not lose it by taking an ijara or farm of the estate within which his holding was situate.[39]

---

38. The Bengal Tenancy Act, 1885, sec. 22(3); The report of the Rent Law Commission, 1880, para. 31; Report of the Select Committee of the Western Bengal Tenancy (Amendment) Bill, 1906, para. 12; Notes on clause 10 of the Eastern Bengal and Assam Tenancy (Amendment) Bill of 1907; Notes on clause 20 of the Bengal Tenancy Amendment Bill of 1928; Gilmore v. Sreemunt (1864) W.R.Gape vol. (Act X) 77; Wooma v. Koondun (1873) 19 W.R. 177; Thomas Savi v. Punchanun (1876) 25 W.R. 503; Ram v. Veryag (1876) 25 W.R. 554; Jardine v. Rani (1878) 3 C.L.R. 140; Raikomul v. J.W.Laidley (1879) I.L.R. 4 Cal. 957; Jasim v. Beni (1913) 17 C.W.N.881

39. Watson & Co., v. Koer Jogendra (1864) 1 W.R. 76; The Bengal Tenancy Act, 1885, sec. 22(3) exp.

If a person holding some land at first as a raiyat and subsequently obtained an ijara of the same land and took advantage of his position to endeavour to create for himself a right of occupancy, his possession of the land during the period of the lease could not be counted as that of a raiyat; and the acquisition of the right of occupancy remained in abeyance during the period.[40] In the words of Jenkins C.J.,-"During the currency of the ijara the active operation of the possession as a means of acquiring the right of occupancy was suspended and remained in abeyance".[41] But a person might add the period he held as a raiyat before his ijara lease to the period he held after the lease to complete twelve years of occupation and might acquire the right of occupancy.[42]

Such was the case-law as to the effect of acquisition of occupancy rights by an ijaradar before the Bengal Tenancy Act, 1885. The framers of the Act simply codified the case-law under section 22(3) which ran as follows:-

"22. (3) A person holding land as an ijaradar or farmer of rents shall not, while so holding, acquire a

---

40. Thomas Savi v. Punchanun (1876) 25 W.R. 503; Jasim v. Beni (1913) 17 C.W.N. 881.
41. Jasim v. Beni (1913) 17 C.W.N. 881 at 882; also quoted in Midnapore zemindary v. Secretary of State (1938) 43 C.W.N. 57 at 68.
42. Mokoondy v. Crowdy (1872) 17 W.R. 274.

a right of occupancy in any land comprised in his ijara or farm.

Explanation. - A person having a right of occupancy in land does not lose it....or by subsequently holding the land in ijara or farm".

But it was ruled in Ramrup v. Manners[43] that an ijaradar could acquire the occupancy right by purchase as the word 'acquire' in section 22(3) did not include purchase. So it was necessary to amend that sub-section. The Select Committee of the Bill of 1906 said:-[44]

"Our attention has been called to a ruling of the High Court (4 C.L.J. 209) to the effect that the word 'acquire' in sub-section 3 of section 22, does not include 'purchase'. In order to prevent the acquisition of a right of occupancy by an ijaradar during the period of his lease through a purchase behind the back of the landlord, we have inserted the words 'by purchase or otherwise' after the word 'acquire'". On the basis of the recommendation of the Select Committee that sub-section was amended by the Western Bengal Tenancy (Amendment) Act, 1907 in the following words:-

"22. (3) A person holding land as an ijaradar or farmer of rents shall not, while so holding, acquire, by purchase or otherwise, a right of occupancy in any land comprised in his ijara or farm".

---

43. (1905) 4 C.L.J. 209.
44. Para. 13 of the report.

The Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 followed the Western Bengal amendment.

After the amendment in both the provinces an ijaradar could not, during the period of his ijara, acquire a right of occupancy in any land comprised in his ijara or farm in any manner whatsoever.[45] But it was ruled that an ijaradar who had purchased an occupancy holding, acquired it as a non-occupancy holding.[46] So it was again amended by the Bengal Tenancy (Amendment) Act, 1928 which ran thus:-

"22. (3) A person holding land as a temporary tenure-holder or farmer of rents shall not, while so holding, acquire a right to hold as a raiyat any land comprised in his temporary tenure or farm.

Explanation. - A person having a right to hold the lands of an occupancy holding as a raiyat does not lose it by subsequently holding the land as a temporary tenure-holder or farmer of rents".

The result of the amendment of 1928 was that an ijaradar or farmer could not claim to have acquired either occupancy or non-occupancy rights in any land within his ijara or farm.[47] The word 'ijaradar was omitted in sub-section (3) probably because it was covered by the words

---

45. Raghubar v. H. Manners (1911) 13 C.L.J. 568.
46. Sheonandan v. Ramhit (1911) 15 C.L.J. 647; Midnapore zemindary v. Secretary of State (1938) 43 C.W.N. 57 at 58.
47. Notes on clause 20 of the Bill of 1928 = The Calcutta Gazette dated July 12, 1928, part IV, p.98.

"farmer of rents". The expression "temporary tenure-holder" was inserted in that sub-section and in the explanation. A temporary tenure-holder was placed in the same category as "farmers of rent".

There was no express provision in section 22(3) of the Bengal Tenancy Act, 1885 regarding acquisition of occupancy right by a person jointly interested in land as ijaradar.[48] But in Maseyk v. Bhagabati Patheram C.J. and Rampini J., held that a person in occupation of land as a raiyat was not debarred under section 22(3) from acquiring occupancy rights in it owing to his being jointly interested in the land as ijaradar or farmer.[49] In this regard the learned Judges observed:-

"The provisions of section 22(3) of the Tenancy Act are, however, peculiar...while they say that an ijaradar shall in this way lose his occupancy rights, they do not say that a person jointly interested in land as an ijaradar shall thereby lose them.....No case has been brought to our notice in which it has been laid down that under the

---

48. (1890) I.L.R. 18 Cal. 121.
49. Ibid., pp.123-24.

old law a person jointly interested in land as an ijaradar shall lose his occupancy rights in land cultivated by him. In Gur Buksh v. Jeolal[50] it has been pointed out that the rule of law laid down in sub-section (2) of the Tenancy Act did not prevail under the old law, so that when sub-sec. (2) is clearly an innovation, it must be concluded that the difference between its provisions and those of sub-sec. (3) is deliberate and intentional. Hence we must hold that both under the former and the present law, a person jointly interested in land as ijaradar does not thereby lose his occupancy rights, and a fortiori his entire rights as a tenant, in land held cultivated by him as a raiyat".

Now we shall consider the case of a trespasser. A person occupying and cultivating land as a trespasser could not acquire a right of occupancy.[51] Nor could such an occupation or cultivation of land be taken into account in considering whether a trespasser occupied as a raiyat for twelve years.[52] In Wooma v. Kishoree[53], it was held that no trespasser could acquire a right of occupancy, however,

---

50. (1888) I.L.R. 16 Cal. 127.
51. The report of the Rent Law Commission, 1880, para. 28; Sheikh Peer v. Sheikh (1864) W.R. spl. vol. 146 F.B.; Goreeb v. Bhoobun (1865) 2 W.R. (Act X) 85; Sheikh Gholam v. Rajah Poorno (1865) 3 W.R. (Act X) 147; Wooma v. Kishoree (1867) 8 W.R. 238; Ishen vl Hurish (1872) 17 W.R. (C.R) 19; Ishan v. Shama (1883) I.L.R. 10 Cal.41.
52. Sheikh Peer v. Sheikh (1864) W.R. spl. vol. 146 F.B.
53. (1867) 8 W.R. 238.

long he might remain on the land. To acquire a right of occupancy it was necessary that a raiyat must have remained on the land and paid rent for twelve years. In the case referred to, the zemindar obtained a decree against a raiyat for assessment on the ground that the raiyat held under an invalid rent free title but, instead of assessing rent, he evicted him. In a suit by the raiyat for recovery of possession it was held that his anterior possession was that of a trespasser and would not avail him on the plea of having acquired a right of occupancy.[54] In Goreeb v. Bhoobun, it was held that a raiyat who secretly possessed land and paid no rent for it had no right of occupancy in the land. Nor could possession obtained and continued by fraud create any right of occupancy.[55]

It may be observed that the acquisition of the right of occupancy did not depend upon holding under, and payment of rent to, the rightful owner. A raiyat occupying and cultivating land for more than 12 years under a landlord, who had no title to the land, nevertheless acquired a right of occupancy.[56] The right was

54. (1865) 2 W.R. (Act X) 85; Sheikh Gholam v. Rajah Poorno (1865) 3 W.R. (Act X) 147; Kalee v. Shahonee (1875) 25 W.R. (C.R.) 42.
55. Bhoobunjoy v. Ram (1869) 9 W.R. 449.
56. The report of the Rent Law Commission, 1880, para.29; Syed Ameer v. Sheo (1873) 19 W.R. 338; Zulfun v. Radhica (1878) I.L.R. 3 Cal.560; Mahima v. Hazari (1889) I.L.R. 17 Cal.45; Binad Lal v. Kalu (1893) I.L.R. 20 Cal. 708 F.B; Azim v. Ramlall (1897) I.L.R. 25 Cal.324; Upendra v. Pratap (1903) I.L.R. 31 Cal.703; Kali v. Bhagwan (1912) 17 C.W.N.348; Dakhyani v. Mono (1913) 19 C.W.N.407; Brojobasi v. Ram (1915) 23 C.L.J. 638 at 639 and 641.

not one conferred by any lessor. It was a right, which, by virtue of the law, accrued to the raiyat from the mere circumstance of cultivating the land for 12 years or upwards and paying rent thereon.[57] If a raiyat was inducted into the land by one of several co-sharers or even by a trespasser,[58] he was entitled to claim the right of occupancy in the same way as if he came into possession at the instance of the absolute and rightful owner.[59] It was quite immaterial as to whose tenant he was, provided he held land bonafide as a raiyat and paid rent therefor.[60]

But the above principle, that the person under whom the tenant held need not be the rightful owner of the land, being in derogation of the ordinary law of transfer, must be applied with caution and within limits. In Upendra v. Pratap,[61] Rampini and Pratt J.J., observed:-

"The case of Binodlal v. Kalu[62] made a great encroachment on the strict law, according to which a landlord, who has no title, can give no title to a third

---

57. Zulfun v. Radhica (1878) I.L.R. 3 Cal. 560; Kali v. Bhagwan (1912) 17 C.W.N. 348; Brojobasi v. Ram (1915) 23 C.L.J. 638 at 639 and 641.
58. Binodlal v. Kalu (1893) I.L.R. 20 Cal. 708 F.B.
59. Dakhyani v. Mono (1913) 19 C.W.N. 407; Azim v. Ramlall (1897) I.L.R. 25 Cal. 324.
60. Zulfun v. Radhica (1878) I.L.R. 3 Cal. 560.
61. (1903) I.L.R. 31 Cal. 703 at 705-06.
62. (1893) I.L.R. 20 Cal. 708 F.B.

person and a person, who has a title, can give a title to another only for as long as his own title endures. But in the case of Binodlal v. Kalu[62] and in cases in which it has been followed, the de facto zemindar was litigating with another or was deprived of his title as the result of a subsequent litigation. It could not be expected that he would let his lands lie fallow, and it would be hard on the raiyats, if they were afterwards ejected, when it was found that he had no title. But it never was intended to be laid down that a person knowing that he had no title could induct persons into the lands of others, and that the persons so inducted could not be evicted by the rightful owners. This has been laid down in no case. If this were the law, then any outsider could constitute any other person the tenant of any landlord and deprive such landlord of all right of letting his own land. This cannot be allowed".

In order to apply the principle in Binadlal's case,[62] therefore, it must be proved that both the tenant and his de facto landlord acted bona fide;[63] the de facto landlord must be in possession and must have placed the lessee in possession. But this principle had no application to a boundary dispute or an encroachment by the tenant of of one landlord upon the land of an adjoining landlord.[64]

---

63. Krishna v. Wafiz (1915) 21 C.W.N. 93; Janab v. Rokibuddin (1905) 9 C.W.N. 571.
64. Tepu v. Tefayet (1915) 19 C.W.N. 772.

Land in which occupancy right could be acquired. - Under the Bengal Rent Act, 1859 and the Bengal Act, 1869, it was essential for a raiyat to hold land for agricultural or horticultural purposes, otherwise no right of occupancy could be acquired.[65]

Neither the Bengal Rent Act, 1859 nor the Bengal Act, 1869 nor the Bengal Tenancy Act, 1885 defined the term 'land'. The Rent Law Commission, 1880 in section 3 of their draft Bill defined 'land' as follows:- "Land includes woods and water thereupon: When applied to land cultivated or held by a ryot, it means land used or intended to be used for agricultural or horticultural purposes or the like". But this suggestion of the commission, which would have obviated all ambiguity, was not accepted.

When the Bengal Tenancy Bill was under discussion, the Maharaja of Darbhanga proposed[66] that the provisions of the Act should be restricted to "land which is the subject of agricultural or horticultural cultivation, or is used

---

65. Kalee v. Jankee (1867) 8 W.R. 250; Ramdhun v. Haradun (1869) 12 W.R. 404; In re Brohmo Moyee (1870) 14 W.R. 252 (per Jackson J., whose opinion prevailed); Muddun v. William (1872) 17 W.R. 441; Durga v. Umdutannissa (1872) 18 W.R. 235 = 9 B.L.R. 113; C.D.Field, Digest, p.3.f.n.6.
66. Selections, p.506.

for purposes incidental thereto". Mr. Reynolds in his remarks on the Maharaja's amendment said:-[67]

"If the amendment were carried, it would have the effect of excluding from the operation of the Bill, not merely all waste lands but all the lands not actually under cultivation at the time the question might be raised. It would leave it open to a landlord to contend that a raiyat's right of occupancy did not extend to those lands of his holding which were not actually under cultivation at the time. It is, in any opinion, better for the council to leave the question to be decided by the courts". The amendment was then put and negatived.

It is, therefore, evident that the omission of any definition of 'land' in the Act was intentional. The question of determining to what classes of land the Act should be applicable was felt to be a difficult one and so it was left to the courts to overcome the difficulties involved in its solution.[68] "The term 'agriculture'", said Mookerjee J., "is of wider import than the term cultivation. It is pointed out in the Oxford Dictionary that [illegible]

---

67. Ibid., p.507.
68. Hedayet v. Kamalanand (1912) 17 C.L.J. 411 at 414-1 .

'agriculture' means the science or art of cultivating the soil, including the applied pursuits of gathering in the crops and rearing live stock, tillage, husbandry, farming (in the widest sense); 'cultivation', on the other hand is defined in the Oxford Dictionary as meaning the tilling of land, tillage, husbandry. It is obvious, therefore, that 'agriculture' has a much wider import than cultivation. Consequently, a purpose may be connected with agriculture but not necessarily ancillary to cultivation". The term 'horticulture' means "the cultivation of a garden or the science of cultivating or managing garden, including growing flowers, fruits and vegetables"[69].

The Bengal Tenancy Act, 1885 dealt with the "law of landlord and tenant"[70] but it did not define the classes of leases to which it applied. The general law of landlord and tenant is contained in chapter V of the Transfer of Property Act, 1882; but section 117 of that Act makes the provisions of that chapter inapplicable to leases for agricultural purposes. Therefore, local laws were enacted

---

69. Ibid., p.415.
70. The Bengal Tenancy Act, 1885, Preamble.

in respect of leases for agricultural purposes to suit the varying conditions of the different provinces in India. The Bengal Tenancy Act, 1885 was one of the local laws for the province of Bengal.

It was established that it was not the nature of the land but the purposes for which the tenancy was created, that determined whether the Transfer of Property Act, 1882 or the Bengal Tenancy Act, 1885 applied.[71] The land must be agricultural and the purpose of the tenancy must be agricultural. In this regard Biswas J., observed:-[72]

"Where the lands are not agricultural, there can obviously be no question of the lease being for an agricultural purpose, but where the lands comprised in a lease are agricultural, all that can be said is that a presumption may arise that the purpose is also agricultural, but this will not necessarily be so. To establish an agricultural purpose, apart from the agricultural character of the lands, the terms of the letting will have to be seen". It followed, therefore, that where a tenancy was shown to have been created for residential purposes, user of the land for agricultural purposes did not bring the tenancy under

---

71. Alauddin v. Tomizuddin (1937) 41 C.W.N. 1001 at 1004.
72. Ibid., p.1004.

the Bengal Tenancy Act, 1885.[73] On the other hand, where a tenancy was created for agricultural purposes, a sub-tenancy carved out of it was, in the absence of anything else, governed by the Bengal Tenancy Act, even though the sub-tenancy might be for a non-agricultural purpose.[74]

Now the question is whether the Bengal Tenancy Act, 1885 applied, in the absence of any express provisions in the Act, to horticultural lands so as to permit of an occupancy right being acquired therein. It was not the intention of the framers of the Act to exclude the application of the Act from any lands to which, according to the rulings of the Court, the earlier Acts applied; for it was expressly provided in section 19 of the Bengal Tenancy Act, 1885 that every raiyat who, by the operation of any enactment, custom or otherwise, had acquired a right of occupancy in any land before the commencement of the Act, should have a right of occupancy in the land under the Act. Moreover, clause (iii) of proviso to section 178 of the Act provided that "nothing in this section shall affect the terms or conditions of any

---

73. Radhanath v. Krishna (1935) 40 C.W.N. 722.
74. Arun v. Durga (1941) 45 C.W.N. 805; Pankajini v. Satish (1935) 40 C.W.N. 86; Sadhan v. Aghore (1933) 37 C.W.N. 818; Babu Ram v. Mahendra (1904) 8 C.W.N. 458.

contract for the temporary cultivation of horticultural or orchard land with agricultural crops".

Turning now to the case law since the passing of the Bengal Tenancy Act, 1885, it does not appear that the Act made any variation in the rule. In fact it was held[75] that the definition of raiyat in section 5(2) of the Act was not exhaustive and that there was nothing in the Act to indicate that it was the intention of the legislature to exclude from its operation horticultural land, to which the provisions of the repealed Acts had uniformly been held to apply.

We may, therefore, say that the Bengal Tenancy Act, 1885 was applicable not only to agricultural lands but also to horticultural lands and the right of occupancy could be acquired in such lands.[76]

Under the Rent Acts of 1859 and 1869 no right of occupancy could be acquired in land used mainly for building purposes or the main object of which was the occupation of a dwelling house. In other words, if the homestead land did not form part of an agricultural holding, the tenant

---

75. Hurry v. Nursingh (1893) I.L.R. 21 Cal.129 at 131; Umrao v. Syed (1899) 4 C.W.N. 96.
76. Hurry v. Nursingh (1893) I.L.R. 21 Cal. 129 at 131; Syed v. Gobinda (1904) 9 C.W.N. 140.

had no right of occupancy as the Rent Acts did not apply to such lands.[77] But if a piece of land was used by a cultivator for his own habitation, and it was a part of his agricultural holding, he could acquire a right of occupancy in it with the rest of his land.[78]

Section 182 of the Bengal Tenancy Act, 1885 provided that "where a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom or usage, and subject to local custom or usage, by the provisions of this Act applicable to land held by a raiyat", The case law went further, especially when the homestead land was held in a different village and under a different landlord. When a raiyat was a settled raiyat of a village and took a plot of homestead land in the village, distinct and separate from his arable holding, and bound himself to give up the homestead land on the expiration of a certain period, it was held[79] that he had an occupancy right in the

---

77. Kalee v. Jankee (1867) 8 W.R. 250; Ranee v. Blumhardt (1868) 9 W.R. 552; Kalee v. Kalee (1869) 11 W.R. 183; Church v. Ram (1869) 11 W.R. 547; Ramdhun v. Haradun (1869) 12 W.R. 404; Durga v. Umdatannissa (1872) 18 W.R. 235; Muddun v. William (1872) 17 W.R. 441; Mohur v. Ram (1874) 21 W.R. 400.
78. Pagose v. Rajoo (1874) 22 W.R. 511; Mahesh v. Bisho (1875) 24 W.R. 402.
79. S.A. No. 1072 of 1892 decided in 1893, quoted by Finucane and Ameer Ali, op.cit., p.759; Golam v. Abdul (1893) 13 C.L.J. 255; Isapali v. Satis (1921) 65 I.C. 504.

homestead land, since there was no local custom or usage to the contrary and the raiyat, being a settled raiyat, acquired occupancy rights under section 21[80] of the Bengal Tenancy Act, 1885 in all the lands held by him as a raiyat in the village. In Abdul v. Kutban[81] the defendant had a raiyati holding and some homestead land in a village. He sold both to a certain person, who sold only the homestead land and the house on it to the plaintiff. The plaintiff, being dispossessed by the landlord, sued to recover possession. It was held that, as the plaintiff did not hold the homestead land as part of his jote and the agricultural land of the original tenant had not been sold to him, he was not a raiyat in respect of the homestead land; and that, as he did not hold the land as a raiyat, the provisions of the Bengal Tenancy Act, 1885 did not apply.

It was held in several cases[82] that section 182 of the Act did not require a tenant in occupation of homestead land to be a raiyat in the village in which the homestead land was situated, nor was it necessary for him to be a tenant of agricultural land under the landlord of the homestead. That is to say that even though the homestead

---

80. Supra, p.114.
81. (1897) 1 C.W.N. clxxi.
82. Kripa v. Sheikh (1906) 10 C.W.N. 944; Hari v. Dinu (1911) 14 C.L.J. 170; Krishna v. Jadu (1915) 21 C.L.J. 475; Dina v. Sashi (1915) 20 C.W.N. 550 = 22 C.L.J. 219; Ganga v. Chairman (1919) 50 I.C.8.

and raiyati were not in the same village or held under the same landlord, section 182 applied. In Pulin v. Abu Bakhar[83] it was held that, where a raiyat held his homestead otherwise than as a part of his holding, he was entitled, in respect of the homestead, to the benefit of sec. 182, although he might have become a raiyat subsequently to his taking the residential tenancy. In Haru v. Surendra[84] it was ruled that, where a raiyat, being a settled raiyat of a village, acquired an occupancy right in a piece of homestead land under section 182, but subsequently sold the agricultural holdings, such a sale did not divest him of the occupancy right in the homestead land. In order to attract the operation of section 182 it was not necessary that the raiyat should have a single homestead or that he should actually carry on agricultural operations from such homestead. Further the Act nowhere required that a raiyat should be an actual cultivator. If a raiyat had two or more homesteads, in each of which he lived at times, then section 182 applied to each such homestead from which he might, if necessary, carry on agricultural operations in respect of his raiyati holdings, if and when such occasion would arise.[85]

---

83. (1936) 40 C.W.N. 599.
84. (1935) 40 C.W.N. 182.
85. Bangshidhar v. Prolhad, (1943) I.L.R. Cal. 221; Rukmini v. Prohlad (1943) 47 C.W.N. 702.

The existing provisions regarding homesteads in section 182 left the law in a state of great doubt and uncertainty, so it was proposed to provide generally that the homestead right of a raiyat of the same or contiguous village should ordinarily be regulated by the provisions of the Act.[86] Accordingly section 182 was amended by the Amending Act of 1928 which ran thus:-

"182. When a raiyat or an under-raiyat holds his homestead otherwise than as part of his holding within the same village or any village contiguous to that village, his status in respect of his homestead shall be that of a raiyat or an under-raiyat according to the status of the landlord of the homestead, and the incidents of his tenancy of such homestead shall be governed by the provisions of this Act applicable to raiyats or under-raiyats, as the case may be".

The object of that section was to give protection to the cultivating tenant, so that he could not be turned out of his homestead.[87] That section contained two parts. It laid down that (a) the status of the tenant in respect of his homestead should be that of a raiyat or under-raiyat according to the status of the landlord and that (b) provisions of the Act should apply to the homestead land too. Where the homestead was held by a raiyat as part of

---

86. Notes on clause 116 of the Bill of 1928 = The Calcutta Gazette dated July 12, 1928, part IV, p.104.
87. Pulin v. Abu Bakhar (1936) 40 C.W.N. 599 at 601.

his agricultural holding, it was not necessary nor permissible to refer to that section.[88] In such a case there was only one tenancy and his rights in the homestead were the same as in the agricultural land.[89] Section 182 applied only when a tenant, who was a raiyat in respect of some agricultural land of a village, held a homestead in the same village or in a different village, on a separate tenancy i.e., apart from his agricultural holding. Under section 182, as amended, the status of a raiyat, holding a homestead otherwise than as part of his agricultural holding, depended, not on the nature of the holding but on the status of the landlord of the homestead.[90] "Homestead" denoted land on which a raiyat had a dwelling which he used for residential purposes; it was not sufficient to show that the character of the land was such as would justify its use as a homestead.[91]

No right of occupancy could be acquired in land used for ghats, bazars, indigo factories, manufactories,[92]

---

88. Rahimuddi v. Amina (1925) 43 C.L.J. 132.
89. Pulin v. Abu Bakhar (1936) 40 C.W.N. 599 at 600.
90. Raj Kumar v. Shib (1932) 36 C.W.N. 788.
91. Dina v. Sashi (1915) 22 C.L.J. 219 = 20 C.W.N. 550.
92. S.C. Mitra, op.cit., p.316.

coal depots,[93] mines or quarries.[94] Nor could it be acquired in a jalkar (fishery)[95] nor in a tank used only for the preservation or rearing of fish,[96] even though possession had been held for more than twelve years. But "where land is let for cultivation", observed Coach C.J., "and there is a tank upon it, the tank would go with the land; and if there was a right of occupancy in the land, there would be a right of occupancy in the tank as appurtenant to the land".[97] Again where a tank and the land on its banks were leased by one document, which showed the purpose of the lease to be "rearing fish in the land and stacking grass for cattle on the banks and grazing cattle" but there was no mention of the purpose for which the cattle were used, as there was evidence that the lessee's family were cultivators and used their cattle for cultivation, the purpose of the lease was construed to be agricultural, so that it would be governed by the Bengal

---

93. Raningani Coal Assocation v. Judoonath (1892) I.L.R. 19 Cal. 489.
94. M. Finucane and Ameer Ali, op.cit., p.59.
95. Wooma Kant v. Gopal (1865) 2.W.R. (Act X) 19; Nidhi v. Ram (1873) 20 W.R. 341; Sham v. The Court of Wards (1875) 23 W.R. 432; Juggo v. Promotho (1879) I.L.R. 4 Cal. 767; Bollye v. Akram (1879) I.L.R. 4 Cal. 961.
96. Siboo v. Gopal (1873) 19 W.R. 200; Mahananda v. Mongala (1904) 8 C.W.N. 804 = I.L.R. 31 Cal. 937.
97. Nidhi v. Ram (1873) 20 W.R. 341; Uma v. Moni (1902) 8 C.W.N. 192.

Tenancy Act, 1885.[98] It was held that the incidents of the lease of the land would govern the lease of the tank and consequently the tenant could acquire an occupancy right inthe tank as appurtenant to the land. Where the grant was merely of a right of fishery, the lessee acquired no interest in the sub-soil, nor was he entitled to retain possession, when the water dried up.[99] But a settlement of land carried with it, in the absence of express reservation, the right to fish when there was water on the land. Where, therefore, the tenant took a lease of a holding, part of which was under water, his right to acquire occupancy rights in the entire holding, inclusive of the portion under water, could not be defeated.[1]

A right of occupancy could be acquired in pasture land.[2] The Bengal Tenancy Act provided[3] that where a tenant of land had the right to bring it under cultivation, he should be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he used

---

98. Surendar v. Chandratara (1930) 34 C.W.N. 1063.
99. Mahananda v. Mangala (1904) 8 C.W.N. 804 = I.L.R. 31 Cal. 937.
1. Jaigobind v. Bhawani (1929) I.L.R. 9 Pat. 401.
2. The Bengal Tenancy Act, 1885, sec.193; Fitzpatric v. Wallace (1869) 11 W.R. 231; Latifar v. Forbes (1909) 14 C.W.N. 372.
3. The Bengal Tenancy Act, 1885, sec.5(2), Explanation

it for the purpose of grazing cattle. On the point Mookerjee J.,observed in Hedayet[4] v. Kamalanand:-

"In order to bring a lease for the purpose of grazing within the meaning of sub-section (2) of section 5 of the Bengal Tenancy Act, it is necessary to prove that grazing was in relation to cultivation, which is the primary purpose for which the raiyat acquires the right to hold land. It follows that the mere circumstance that a considerable portion in the tenancy under consideration was let out for the purpose of grazing is not conclusive upon the question whether the tenant has or has not acquired the status of a raiyat. If, as a matter of fact, the grazing was in relation to agriculture and if, immediately or shortly after lease had been granted, the tenant grazed cattle on the land as subsidiary to agricultural pursuits, the inference would legitimately follow that the lease was for agricultural purposes and was granted for a purpose subordinate to that of cultivation. If that is established, the tenant may very well claim to have acquired the status of an occupancy raiyat[5]". Similarly in Brojobashi v. Ram it was observed:-

"The land may have been used for the grazing of

---

4. (1912) 17 C.L.J. 411 at 414.
5. (1915) 23 C.L.J. 638 at 640.

cattle required for agricultural pursuits; or it may have been used for the grazing of cattle required for avocations totally unconnected with agriculture. In the former contingency, but not in the latter, the holding has ben used for agricultural purpose and a right of occupancy has been acquired therein".

It is now clear that to acquire an occupancy right in pasture land, it was necessary that the grazing should be for the purpose of agriculture. The gathering and storage of crops raised by a raiyat was clearly a purpose auxiliary to cultivation, and when land was let out for a purpose like that, the provisions of the Bengal Tenancy Act, 1885 applied and the lessee became a raiyat in respect thereof. In such a case the right of occupancy could be acquired in such land.[6]

Under the Bengal Rent Act, 1859 and the Bengal Act, 1869 a right of occupancy could be acquired in Utbandi[7] lands.[8] An utbandi tenancy was described as "a tenancy from year to year and sometimes from season to season, the rent being regulated not ... by a lump payment in money for the

6. Dina v. Sashi (1915) 20 C.W.N. 550 = 22 C.L.J. 219.
7. utbandi, from uthit, risen, cultivated and badni, bandabust, assessment. The literal meaning of the term is "assessed according to cultivation". Vide Bengal District Gazetteers, Nadia (Calcutta: Bengal Secretariat Book Depot, 1910) Vol.XXIV, p.112; M.Finucane and Ameer Ali, op.cit., p.743.
8. Dwarkanath v. Koboo (1870) 14 W.R. 193; Premanund v. Shoorendronath (1873) 20 W.R. 329.

land cultivated but by the appraisement of the crop on the ground, and according to its character. So far it resembles the tenancy by crop appraisement of the bhaoli system; but there is between them this marked difference, that while in the latter the land does not change hands from year to year, in the former, it may"[9]. The utbandi lands were also known as naksan or loksan[10] lands[11]. The system prevailed in the district of 24 - Parganas, Nadia, Jessore, Khulna, Murshidabad and also Pubna[12]. It originated from the district of Nadia, from which it spread to neighbouring districts, though in no district was it as common as in Nadia, where about five-eighths of the cultivated lands were held under it[13]. The system had its origin "originally perhaps in the poverty of the soil and was stimulted by the cultivation of indigo"[14].

---

9. The report of the Bengal Government dated 15th September, 1884, para. 80 = Selections p.377; W.W.Hunter, A Statistical Account of Bengal (London: Trubner & Co., 1875) vol.II, p.73.
10. naksan or loksan = means loss.
11. S.C.Mitra, op.cit.,,p.317; M.Finucane and Ameer Ali, op.cit p.747.
12. Letter from the Commissioner of the Presidency Division, Bengal, No. 24 R.L., dated 17th September, 1884, quoted by R.F. Rampini, op.cit., p.413.
13. Bengal Distirct Gazetteers, Nadia, p.112.
14. Government Resolution on the final report on the Survey and settlement operation in the district of Nadia = supplement to the Calcutta Gazette dated 6th June, 1929, p.806.

The nature and incidents of that system were also discussed in some cases.[15]

When the Bengal Tenancy Bill of 1884 was under consideration the Bengal Government proposed to treat utbandi lands as ordinary raiyati lands i.e., to presume the tenants of utbandi lands to be settled raiyats if they held any land in the village for 12 years and to declare that they had, as settled raiyats, occupancy rights in all lands held by them in the village.[16] But the Select Committee of the Bill did not, however, concur with the Bengal Government.[17] They applied the provisions relating to char and dearah[18] lands to utbandi lands, and remarked that "It has been admitted throughout our discussions that lands held on reclamation-lease, chur or dearah lands and lands taken under the customs known as utbandi....must be treated exceptionally".[19] The subsequent Select Committee also were of the same opinion.[20] They observed that "we have in

---

15. Beni v. Bhuban (1890) I.L.R. 17 Cal. 393; Surendra v. Baidyanath (1932) 37 C.W.N. 335 at 338.
16. The report of the Bengal Government dated 15th September, 1884, para. 80 = Selections, p.377; Bengal District Gazetteers, Nadia, p.113.
17. 'Char' = sand bank; an island or alluvial formation thrown up by a river. (The report of the Rent Law Commission, 1880, para. 49 f.n.10.).
18. 'dearah' = an island formed in the bed of a river.
19. The report of the Select Committee dated March 14, 1884, para.92 = Selections, p.251.
20. The report of the Select Committee dated February 12, 1885, para. 56 = Selections, p.409; also Sir Steuart Bayley's speech dated 27th February 1885 = Selections p.450.

section 180 put utbandi lands on the footing on which churlands were placed by section 213 of the Bill No.II, that is to say, no occupancy right will be acquired in them until they have been held for twelve years, and meantime the tenant will be bound to pay whatever rent may be agreed on between him and his landlord".

Accordingly it was laid down in Section 180(1) of the Bengal Tenancy Act, 1885 that an utbandi tenant could acquire no right of occupancy until he held the same land for twelve years continuously and that, until he acquired such a right he was liable to pay the rent agreed on between him and the landlord. It may be observed that under those circumstances it was practically impossible for a tenant to acquire a right of occupancy in utbandi lands except with the consent of the landlords.[21]

In char and diara lands, which are always under the risk of being innundated and sometimes unculturable by reason of their being low or sandy, the legislature provided in the Bengal Tenancy Act, 1885[22] that mere fact of occupation of such lands by a settled raiyat was not sufficient to create any right of occupancy in them. They must be held continuously for twelve years before the

---

21. Bengal District Gazetteers Nadia, p.113.
22. Sec. 180(1).

right could be acquired. But when such lands became permanent in character, the collector of the district was empowered to declare that they ceased to be char or diara land. In that case only a raiyat could acquire the right of occupancy in them in the same way as any other land.[23]

Where lands were annexed to a jote by gradual accretion, the jotedar was entitled to hold them; when he had an occupancy right in his jote, he was entitled to hold the accreted land with the same right of occupancy in them.[24] But where there was no pre-existing right to the lands of the raiyat, no such right could be acquired in the accreted land.[25] Where a tenant paid rent continuously for twelve years for char lands, occasional submersion of the land during the period would not prevent the acquisition of occupancy right therein.[26] A tenant in order to escape eviction from char lands must prove continuous possession for twelve years of the identical plots in his possession at the date of the institution of the suit.[27]

---

23. The Bengal Tenancy Act, 1885, sec.180(2);The report of the Bengal Government dated 15th September, 1884, para.74.
24. Gobind v. Dino (1871) 15 W.R. 87; Attimollah v. Sheikh (1871) 15 W.R. 149; Bhuggobut v. Doorg (1871) 16 W.R.94; Gour v. Bhola (1894) I.L.R. 21 Cal. 233.
25. Beni v. Chaturi (1906) I.L.R. 33 Cal. 444.
26. Kesho v. Jirdhan (1916) 2 Pat. L.J. 48.
27. Chandra v. Jiban (1924) 29 C.W.N. 290 at 291.

No right of occupancy accrued in Government lands in a cantonment or in lands acquired under the Land Acquision Act, 1894, while they were the property of Government or a local authority or a Railway Company.[28] Nor did such rights accrue to lands owned by the Government or by any local authority which were used for any public work such as a road, canal or embankment or were required for their repair or maintenance.[29]

We now pass to a proprietor's private or demesne lands. These lands were known in Bengal as khamar, nij or nij-jote and in Behar as ziraat, sir, or khamat.[30] The distinction between tenemental lands and the lord's domain is well-known in Europe. The lord's domain in the feudal system resembled in many respects the proprietor's private lands in Bengal.

The Decennial Settlement Regulation VIII of 1793[31] included in the assessment of land revenue the profits of khamar, nij-jote and other private lands as of ordinary raiyati lands. But that Regulation did not lay down any rules as to the rights of the landlord in relation to the raiyats with respect to those lands.

---

28. The Bengal Tenancy Act, 1885, sec.116 as amended by the Acts of 1907 and 1908.
29. Ibid., sec. 116 as amended by the Act of 1928.
30. The Original Bengal Tenancy Act, 1885, sec.116.
31. Sec.39.

Under the Rent Acts of 1859 and 1869, the right of occupancy could not accrue in khamar, nij or nij-jote land when it was let out under a lease for a term of years or year by year.[32] In other words, the right of occupancy could, therefore, be acquired in those lands when they were not so let.[33] It was held that the mere fact of land being nij-jote did not per se prevent a cultivator from acquiring right of occupancy in it. It was only when such lands were let by the zemindar on a lease for a term of years or from year to year that the growth of occupancy were prevented. A raiyat possessing land for upwards of 12 years was not deprived of his right of occupancy by reason of the khamar character of his land, unless he came within the exception of section 6[34] of the Bengal Rent Act, 1859 and the Bengal Act, 1869.[35] In Bhugwan v. Jug,[36] it was held that if the original letting of the khamar land was for a term, and if on the expiry of the term, the tenant was allowed to hold over tacitly as a tenant from year to year for a considerable length of time, such long possession

---

32. The Bengal Rent Act, 1859, sec.6; The Bengal Act, 1869, sec.6.
33. Gour v. Beharee (1869) 12 W.R. 278; Ashraf v. Ram (1875) 23 W.R. 288.
34. Supra, p.106.
35. Ashraf v. Ram (1875) 23 W.R. 288.
36. (1873) 20 W.R. 308.

would neither alter the character of the land, nor confer occupancy rights on the tenant.[37] In Hurish v. Gunga, it was held that land in the possession of a zemindar, whether cultivated or uncultivated, was khamar land and a right of occupancy could not be acquired upon it by a raiyat, except under some special arrangement. The right to hold nij-jote land necessarily passed with the sale of the zemindari to the auction purchaser and a zemindar occupying his own lands as nij-jote could not, when the zemindari passed into other hands, claim to retain them on the ground that he was a raiyat with right of occupancy.[38][39]

The distinction between proprietor's private land and raiyati land existed from early times and was recognized from the commencement of British Rule in Bengal.[40] It does not seem that the Bengal Tenancy Act, 1885 made any variation in the established rules in the matter. Para. 18 of the statement of objectsand reasons to the Bengal Tenancy Bill of 1883 as introduced in Council contained the following passage which was afterwards struck out:-

---

37. (1876) 25 W.R. 181.
38. Joy v, Bayee (1867) 7 W.R. 40.
39. Reed v. Sreekishen (1871) 15 W.R. 430.
40. Sir C.P. Ilbert's speech dated 2nd March, 1883 = Selections, p.54.

"Having regard to the efforts made by landlords in some parts of the country under the existing law, to get into their own hands as large an amount of the raiyati land as possible and convert it into khamar land, it has been thought necessary to make it clear by the definition that the existing stock of khamar land can not hereafter be increased, and further to enact that all land which is not khamar land shall be deemed to be raiyati land, and that all land shall be presumed to be raiyati land till the contrary is proved".[41]

Though that provision was not embodied in the Act, the Court placed, in a suit for ejectment against a tenant, the onus on the landlord to prove that the land was his private land.[42]

Section 116 of the Bengal Tenancy Act, 1885 prevented, under special arrangements, the acquisition not only of the occupancy right but also of non-occupancy right in a proprietor's private land. That section ran thus:-

"116. Nothing in Chapter V[43] shall confer a right of occupancy in, and nothing in Chapter VI[44] shall apply...

---

41. Selections, p.196.
42. Herbert v. Chattur (1907) 13 C.W.N. 664; Ajodhya v. Ram, (1908) 13 C.W.N. 661.
43. Chapter V of the Bengal Tenancy Act, 1885 dealt with the acquisition and the incidents of occupancy right.
44. Chapter VI dealt with the rights and liabilities of non-occupancy raiyats.

to a proprietor's private lands (known as khamar, nij, nij-jote, ziraat, sir, or khamat)[45] where any such land is held under a lease for a term of years or under a lease from year to year".

According to that section, based on the report of the Rent Law Commission, 1880[46] and the report of the Select Committee of the Bill,[47] a tenant could not acquire a right of occupancy in the proprietor's private land when the land was held under a lease for a term of years or from year to year. Acquisition of occupancy or non-occupancy right by a tenant in an alleged ziraat land could not be prevented, unless the landlord proved that, when the holding was first created, it was held under a lease for a term of years or from year to year.[48] If the land was not so initially let out, the execution of a kabuliat for a term of years by a tenant during the continuance of the tenancy did not prevent the acquisition of occupancy right.[49] On the other hand it was held that a tenant of private land under a lease for a term could not acquire a right of occupancy by holding over

---

45. The words within bracket were substituted for the words "known in Bengal as khamar, nij or nij-jote and in Behar as ziraat, sir or khamat" by section 85(b) of the Bengal Tenancy (Amendment) Act, 1928.
46. Para. 31 of the report.
47. Para. 16 of the report dated 14th March, 1884 = Selections p.242.
48. Masudan v. Goodar (1905) 1 C.L.J. 456 = 9 C.W.N. C VII; Ajodhya v. Ram (1908) 13 C.W.N. 661.
49. Masudan v. Goodar (1905) 1 C.L.J. 456 = 9 C.W.N. C VII.

after the expiry of the lease.[50] In Mahanth v. Janki,[51] the Judicial Committee of the Privy Council held that a lessee of ziraat land was a tenant only during the continuance of the term of the lease and upon the expiry he became a trespasser.

It may be observed that during the British period, the landlords were not allowed, in the interest of the raiyats, to encroach upon the raiyati land under the name of khamar land.[52]

How occupancy right could be acquired. - Under section 6 of the Bengal Rent Act, 1859 and the Bengal Act 1869 a raiyat could acquire, except in a proprietor's private land, a right of occupancy by twelve years' occupation of the same plot of land, whether held under a patta or not. That section ran as follows:-

'Every ryot who shall have cultivated or held land for a period of 12 years shall have a right of occupancy in the land so cultivated or held by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same; but this rule does not apply to khamar, neej-jote, seer land belonging to the proprietor of the estate or tenure and let by him on lease for a term,

---

50. Khalilur v. Rupan (1908) 12 C.W.N. 436.
51. (1922) I.L.R. 1 Pat. 340 = A.I.R. 1922 P.C. 142.
52. Sir Steuart Bayley's speech dated 27th Feburary, 1885 = Selections, pp.446-47.

or year by year, nor (as respects the actual cultivator) to lands sub-let for a term or year by year, by a ryot having a right of occupancy. The holding of the father or other person from whom a ryot inherits, shall be deemed to be the holding of the ryot within the meaning of this section".

But the provisions of section 6 had been restricted by section 7 of the said Acts which excluded all cases in which the land was held under an express written contract, inconsistent with the accruing of a right of occupancy. That section ran thus:-

"Nothing in the last preceding section shall be held to affect the terms of any written contract for the cultivation of land entered into between a land-holder and a ryot, when it contains any express stipulation contrary thereto".

On the perusal of those sections Mr. Bell remarked[53] that "in the absence of a written stipulation to the contrary, all ryots, with the exception of neej-jote ryots, whether they held for a term or not, necessarily acquired after 12 years a right of occupancy in the land". But a difficulty arose when a raiyat had been in occuaption under successive written leases for terms of years aggregating to more than 12 years and the matter was decided by holding that the[54]

---

53. H.Bell, op.cit., p.18.
54. Pundit v. Ram (1871) 17 W.R. 62 F.B; Golam v. Hurish (1872) 17 W.R. 552; Narain v. Munsur (1876) 25 W.R. 155; Chandrabati v. Harington (1890) I.L.R. 18 Cal. 349 P.C.

mere reservation of a right of re-entry on the part of the landlord, unless it amounted to an express stipulation under section 7 of the Rent Acts of 1859 and 1869, did not bar the accrual of the right; and a raiyat, who held under a succession of pattas, each for a shorter period than 12 years, but whose occupation in the aggregate amounted to more than the statutory period, was entitled to a right of occupancy.

Under the Bengal Tenancy Act, 1885 a raiyat acquired the right of occupancy by occupation of any land continuously for 12 years[55] whether he held under a lease or otherwise,[56] except in the case of a raiyat who acquired the status of a settled raiyat of the village, in which case no period of occupation of the land was required, since a settled raiyat acquired the right of occupancy in all lands held by him as a raiyat in that village.[57] The raiyat might hold the land in any village for a continuous period of 12 years, notwithstanding that the particular land held by him was different at different times.[58] Under the Bengal Rent Act, 1859 it was held in a Full Bench decision that[59]

---

55. The Bengal Tenancy Act, 1885, sec.20 (1); The report of the Rent Law Commission, 1880, para. 28.
56. The Bengal Tenancy Act, 1885, sec.20(1).
57. Ibid., sec.21.
58. Ibid., sec.20(2).
59. Thakooranee v. Bisheshur (1865) B.L.R. sup.vol. 202 at 222 F.B.

the holding of land for 12 years, whether partly before or partly after the passing of that Act, entitled a raiyat to a right of occupancy. The Bengal Tenancy Act, 1885 expressly laid down[60] the same rule of law in the words "wholly or partly before or after the commencement of this Act". A raiyat was also entitled to the benefit of the occupation of his father or other person from whom he inherited.[61] This was also the law before the Bengal Tenancy Act, 1885.[62] When land was held by two or more co-sharers as a raiyati holding, each of them held as a raiyat and acquired a right of occupancy.[63]

Under the earlier laws a raiyat could surrender his right of occupancy.[64] But such a contract was declared invalid and unenforceable by section 178 (1)(a) of the Bengal Tenancy Act, 1885, which provided that "nothing in any contract between a landlord and a tenant made before or after the passing of this Act shall bar in perpetuity the acquisition of an occupancy right in land".

We have already noted that the acquisition of the[65]

---

60. The Bengal Tenancy Act, 1885, sec.20(1).
61. Ibid., sec.20(3).
62. The Bengal Rent Act, 1859, sec.6; The Bengal Act, 1869, sec.6.
63. The Bengal Tenancy Act, 1885, sec.20(4).
64. The Bengal Rent Act, 1859, sec.7; The Bengal Act, 1869, sec.7.
65. Supra, p.143.

right of occupancy did not depend upon holding under, and payment of rent to, the rightful owner. Nor was it necessary that the raiyat should be the actual cultivator of the soil in order to acquire the right of occupancy.[66]

Non-payment of rent did not bar the acquisition of the right of occupancy,[67] neither did it involve the forfeiture of the right when once acquired.[68] In Narain v. Opnit,[69] it was held that for acquiring the right of occupancy two conditions only were necessary, viz., (a) the cultivation or holding of land for a period of 12 years, and (b) that the person holding or cultivating the land should be a raiyat. Non-payment of rent might be a valid ground for holding that the land was held not as a raiyat but as a trespasser. The acquiring of a right of occupancy was dependent only upon the two conditions mentioned above, but the maintenance of it was further dependent upon another condition viz., payment of rent. In Nilmany v. Sonatun[70] it was observed that non-cultivation of land,

---

66. The Bengal Tenancy Act, 1885, sec.5(2); The report of the Rent Law Commission, 1880, para. 28.
67. Narain v. Opnit (1882) I.L.R. 9 Cal.304.
68. Musyatullah v. Noorzahan (1883) I.L.R. 9 Cal. 808; Nilmony v. Sonatun (1887) I.L.R. 15 Cal.17.
69. (1882) I.L.R. 9 Cal. 304 at 307.
70. (1887) I.L.R. 15 Cal. 17 at 18.

coupled with non-payment of rent might be sufficient to justify the conclusion that the tenant had relinquished the land, but mere non-payment of rent by itself was not sufficient to support the conclusion that there was no subsisting right of occupancy. Under the Rent Acts of 1859 and 1869, the failure of a tenant to pay rent only entitled the landlord to re-enter by ejectment and at the same time the tenant had the right to protect his interest by paying the arrears of rent within 15 days of the date of the decree.[71] But under the Bengal Tenancy Act, 1885 an occupancy raiyat could not be ejected on the ground of non-payment of rent,[72] but his holding was liable to be sold in execution of a decree for rent.[73] When the relationship of landlord and tenant had once been proved to exist, the mere non-payment of rent for several years was not sufficient to show that it ceased to exist.[74]

Extinguishment of occupancy right. - Under the Rent Acts of 1859 and 1869, the right of an occupancy raiyat could be determined for non-payment of rent, for the breach

---

71. The Bengal Rent Act, 1859, sec.78; The Bengal Act, 1869, sec.52.
72. The Bengal Tenancy Act, 1885, sec.25.
73. Ibid., sec.65.
74. Rungo v. Abdool (1878) I.L.R. 4 Cal.314; The report of the Rent Law Commission, 1880, para. 145.

of any condition in the contract of lease, express or implied, by the denial of landlord's title, by surrender, by abandonment and by merger.[75] But the law had undergone a change under the Bengal Tenancy Act, 1885 which only recognised extinguishment of an occupancy right by surrender,[76] abandonment,[77] escheat[78] and merger.[79] Obviously when a raiyat surrendered or abandoned his holding, he lost his right of occupancy. Regarding extinction of an occupancy right by escheat, the proviso to section 26 of the Bengal Tenancy Act, 1885 laid down that "in any case in which, under the law of inheritance to which the raiyat is subject, his other property goes to the Crown, his right of occupancy shall be extinguished". We have already noted[80] that the right of occupancy was extinguished when the entire interest of the landlord and the raiyat in the holding became united in the same person by transfer, succession or any other way whatsoever. The principle of the rule was based on the maxim "nemo potest esse tenens et dominus" i.e., a person can not be, at the same time, both landlord and tenant of the same premises. As regards

---

75. S.C.Mitra, op.cit., p.339.
76. The Bengal Tenancy Act, 1885, sec.86.
77. Ibid., sec.87.
78. Ibid., sec.26.
79. Ibid., sec.22.
80. Supra, pp.127-32.

the applicability of the doctrine of merger on a co-sharer landlord,[81] we have already observed that, under the original sub-section (2) of section 22, when an occupancy right in land was transferred to a co-sharer landlord, it ceased to exist. But under the Amending Act of 1928 it did not cease unless the landlord purchased a holding in execution of a rent-decree or certificate.

Sec. 4 Non-occupancy raiyats.

When the Bengal Rent Acts of 1859 and 1869 created a special class of privileged raiyats under the name of occupancy raiyats, it necessarily left a body of less privileged raiyats, who had cultivated or held lands for less than twelve years. They were grouped under the class of raiyat not having right of occupancy.[82] They were mere tenants-at-will.[83] Under those statutes they had no definite status and no distinct set of rights. In this regard the Bengal Government in its report of 1884[84] said:-

"Under the existing law of landlord and tenant in Bengal, a raiyat not having a right of occupancy can not, against the will of his landlord, retain possession of his

---

81. Supra, pp.132-37.
82. The Bengal Rent Act, 1859, sec.8; The Bengal Act, 1869, sec.8.
83. C.D.Field, Bengal Code, para.38.
84. The report of the Bengal Government dated 15th September, 1884, para. 53 = Selections, p.373.

holding. The raiyat may have been 11 years in occupation of the holding; he may have improved it and so raised its letting value; and he may be willing to pay a fair and equitable increase of rent. But, as the law at present stands, none of these considerations avail him. If the landlord be so disposed, he may confiscate the raiyat's outlay and deprive him of a possession which, as the statistics presented in the appendix to this letter show, would, in a few months, become a valuable property. This state of the law has, as might be expected, led to gross abuse, especially in Behar, where it has been made use of to prevent the accrual of occupancy rights, and, owing to the ignorance of the people, to destroy rights which had actually accrued. The papers forwarded to the Government of India in connection with the 'no rent' agitation in Mymensing show that a similar and equally objectionable practice has long prevailed in that district, and the reports now submitted exhibit a most authoritative expression of opinion, judicial as well as executive, in favour of improving the status of the occupancy raiyats".

Under section 4(c) of the Bengal Tenancy Act, 1885 non-occupancy raiyats were defined as "raiyats not having a right of occupancy" in the land held by them. They were raiyats who had not cultivated land continuously in a village

for 12 years and had not purchased the rights of occupancy in the holdings which they cultivated. Though they had not the same rights as occupancy raiyats, they nevertheless enjoyed a considerable measure of protection. The Act of 1885 for the first time recognised a new category of raiyats viz., non-occupancy raiyat and conferred on them a status and rights. "A raiyat not having a right of occupancy" referred to in section 8 of the Rent Acts of 1859 and 1869 and a non-occupancy raiyat mentioned in section 4(c) of the Act of 1885 did not belong to the same class. On the point Jenkins C.J., in the Full Bench decision in Midnanore zemindary[85] v. Hrishikesh observed:-

"It is not accurate to speak of non-occupancy raiyats under the old law. The expression 'non-occupancy raiyat' first appears in the Bengal Tenancy Act, and the holding of non-occupancy raiyats is not the exact counterpart of any holding under the old law".

The Judicial Committee of the Privy Council also expressed the same view.[86] In terms of the definition of a non-occupancy raiyat given in the Act of 1885, can we say that a raiyat

---

85. (1914) I.L.R.41 Cal. 1108 at 1121 F.B.
86. Jagarnath v. Janki (1921) 26 C.W.N. 833 at 838 P.C.

who was not a raiyat at fixed rates or an occupancy raiyat was a non-occupancy raiyat? The answer is in the negative. The Judicial Committee held[87] that section 4 of the Bengal Tenancy Act, 1885 merely specified the classes of tenants and did not confer on any one any status or right. Chapter VI of the Act dealt with the acquisiton of the status and rights of a non-occupancy raiyat. Nothing in that chapter applied to a proprietor's private lands held for a term or from year to year,[88] or lands held under the custom of utbandi,[89] so that a tenant of such lands did not acquire the status of a non-occupancy raiyat.[90] It was held that the mere fact that a person, who had been for a term a tenant of the proprietor's private land, had not been a raiyat at fixed rates or an occupancy raiyat, did not raise any presumption that he had acquired the status or the rights of a non-occupancy raiyat.

Under the Bengal Tenancy Act, 1885 a non-occupancy raiyat was, however, an occupancy raiyat in embryo; for as soon as he completed the period of twelve years, he acquired the right of occupancy.[91] So long as occupancy holding was not transferable, a purchaser, when admitted by the landlord as a tenant, came within the category of non-occupancy raiyat;

---

87. Ibid., p.839.
88. The Bengal Tenancy Act, 1885, sec.116.
89. Ibid., sec.180(2).
90. Jagarnath v. Janki (1921) 26 C.W.N. 833 at 839 P.C.
91. The Bengal Tenancy Act, 1885, sec.20(1) read with sec. 21(1).

but since his holding was transferable by the Amending Act of 1928, such a purchaser automatically became an occupancy *raiyat*.

CHAPTER 3

Rights of raiyats

Sec.1. Rights of raiyats at fixed rates.

Under the Rent Acts of 1859 and 1869 the interests of a raiyat at fixed rates were permanent, transferable and heritable.[1] The Bengal Tenancy Act, 1885 followed the existing law. With regard to transfer and succession, the Act placed him on the same footing as a permanent tenure-holder. Section 18 of the Bengal Tenancy Act, 1885 provided that "a raiyat holding at a rent or rate of rent, fixed in perpetuity, shall be subject to the same provisions with respect to the transfer of, and succession to, his holdings as the holder of a permanent tenure". Maclean C.J. and Banerjee J., observed[2] that section 18 did not make all the incidents of a permanent tenure-holder applicable to raiyati holdings at fixed rates, but only the provisions with respect to transfer and succession. The provisions regarding transfer of a permanent tenure were declared in section 11 of the Act that "every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent

---

1. S.C.Mitra, op.cit., p.287.
2. Nilmani v. Mathura (1900) 4 C.W.N. clix at clx.

as other immovable property". It was held in a number of cases[3] that the word 'transfer', as used in sections 11 and 18 of the Act, included a lease. Therefore a raiyat at fixed rates could transfer his holding by sale, gift, mortgage and sub-lease in the same way as a permanent tenure-holder could.[4] Rankin C.J. and Mukherjee J.,[5] held that he had a permanent and transferable right in his holding.

When a raiyat at fixed rates was assimilated to the position of a tenure-holder with regard to the transfer of, and succession to, his holding, a valid transfer by him of his holding could only be effected by registered document, subject to the conditions imposed by section 12 of the Act. That section required a voluntary transfer of a permanent tenure to be made by an instrument registered under the law of registration and prohibited the registering officer from registering a sale, gift or usufructuary mortgage, unless a process fee, for service of notice on the landlord, was paid to him. The sale of a holding of a raiyat at fixed rates in execution of a decree, other than a decree for rent, could not be confirmed, unless the

---

3. Hari v. Atul (1913) 19 C.W.N. 1127; Ram v. Udai (1918) 49 I.C.515; Hochen v. Poresh (1919) 54 I.C.647; Amar v. Prasana (1920) 25 C.W.N.8; Raj Kumar v. Ramani, A.I.R. 1927 Cal.878.
4. Ibid.,
5. Hemangini v. Asutosh, A.I.R. 1929 Cal.330.

requirement of section 13 were complied with. That section declared that (a) when the permanent tenure was sold in execution of a decree, other than a decree for arrears of rent, or (b) when a mortgage of a tenure, not being a usufructuary mortgage, was foreclosed, the process fee must be paid to the Court before the passing of the order of confirmation of sale or of foreclosure absolute, by the purchaser or mortgagee.

The Bengal Tenancy Act, 1885 recognized the transfer of a share of a holding of a raiyat at fixed rates and enabled the transferee to be regarded as one of the tenants in respect of the holding.[6] A purchaser of a share of such a holding might bring a suit for a declaration of his right to that share and for possession of the same after setting aside a sale held in execution of a decree for rent to which he was not made a party.[7]

As a raiyat at fixed rates held the same position as a tenure-holder in the matter of succession, the provisions of section 15 to 17 of the Bengal Tenancy Act, 1885 would mutatis mutandis apply to him. Section 15 required the successor to a permanent tenure to obtain mutation of his name in the landlord's sherista (rent roll) within six

---

6. The Bengal Tenancy Act, 1885, sec.18 read with sec.17.
7. Mahesh v. Saroda (1893) I.L.R. 21 Cal. 433; Monmohan v. Equitable Coal Co., (1913) 18 C.W.N. 596.

months from the date of succession. Section 16 declared that, if the mutation was not done, he would be debarred from recovering the rent by suit or other proceeding. Section 16A made it clear that the transferee of a permanent tenure included the transferee's successors-in-interest. Section 17 extended the above provisions (sections 12 to 16A) to the transfer of, or succession to, a share in a permanent tenure. It is, therefore, evident that an interest of a raiyat at fixed rates was heritable. Heritability is also implied from the fact that the rent of that class of raiyat was fixed in perpetuity.

A raiyat at fixed rates might use the land in any manner he liked. There was nothing in the law which prevented a tenant, having permanent heritable rights at a fixed rent, from using the land in any manner he thought fit, so long as it did not impair the right of the landlord to recover the rent payable; unless there were reservations, the landlord had no right, other than the right to receive the stipulated rent.[8]

Before the Bengal Tenancy (Amendment) Act, 1928 there was no express provisions in the Act as to the right in trees of a raiyat at fixed rates. But it was held in

8. Barada v. Bhupendra (1923) I.L.R. 50 Cal. 694; Dheput v. Halal (1864) W.R. Gape vol.279.

several cases[9] that he could cut down trees and appropriate the timber. The Amending Act of 1928 simply gave statutory recognition to his rights in trees by inserting a new clause (d) to section 18 (1) of the Act which declared that "a raiyat holding at a rent, or rate of rent fixed in perpetuity shall be entitled (i) to plant, (ii) to enjoy the flowers, fruits and other products of, (iii) to fell, and (iv) to utilise or dispose of the timber of, any tree on the land comprised in his holding".

A raiyat at fixed rates had[10] the right to surrender and abandon his holding[11]; he could make improvements[12] and sub-divide his holding.[13] As these rights were common to all classes of raiyats, we shall discuss them in detail in the next section along with the rights of occupancy raiyats.

Sec. 2. Rights of occupancy raiyats.

Right to use land. - Under the Rent Acts of 1859 and 1869 the right of an occupancy raiyat to use the land was restricted to the purposes for which the tenancy was

---

9. Midnapore zemindary v. Jagat A.I.R. 1925 Cal. 139; Radhika v. Samir (1917) 21 C.W.N. 636; Goluck v. Nubo (1874) 21 W.R.(C.R.)344; Sharoda v. Gonee (1864) 10 W.R. (C.R.)418.
10. The Bengal Tenancy Act, 1885, sec.86.
11. Ibid., sec.87.
12. Ibid., sec.77.
13. Ibid., sec.88.

created and in case of any attempted diversion, the landlord was entitled to restrain him. Although the Courts were inclined to place a liberal interpretation on the right of the tenant to use the land in his occupation, they did not sanction a complete change in the mode of enjoyment.[14] Accordingly, though in an early case[15] it was ruled that a raiyat with a right of occupancy might build a pucca house on his land, or do what he liked with it, so long as he did not injure it to the detriment of the landlord, in later cases[16] it was held that the landlord was entitled to object to the erection of brick-houses on land let for the purpose of cultivation or to the doing, in fact, of anything which would substantially alter the character of the tenancy. Nor could an occupancy raiyat excavate a tank on his land in contravention of the terms of his lease,[17] or dig earth for the purpose of making bricks.[18] It would also seem from the decided cases that the conversion[19]

---

14. Lal v. Deo (1878) I.L.R. 3 Cal. 781.
15. Nyamutoollah v. Gobind (1866) 6 W.R. (Act X) 40.
16. Shib v. Bamun (1871) 15 W.R. 360; Jugut v. Eshan (1875) 24 W.R.220; Lal v. Deo (1878) I.L.R. 3 Cal. 781.
17. Tarini v. Debnarayan (1871) 8 B.L.R. App.69.
18. Monindro v. Muneer (1873) 20 W.R. 230.
19. Kadambenee v. Nobeen (1865) 2 W.R. (C.R.).157; Anund v. Bissonath (1872) 17 W.R. 416.

of paddy land into a garden for horticultural purposes was a misuse of the land.[20] Where the land had, with the consent of the landlord, ceased to be agricultural, and the tenant had built a homestead or used part of it for tanks or gardens, it was held[21] that the nature of the tenancy was not thereby changed, nor was the tenant thereby deprived of any right of occupancy which he might have acquired.

The Bengal Tenancy Act, 1885, made a great change in the law. Section 23 of the Act declared that "when a raiyat has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land, or render it unfit for the purposes of the tenancy". That provision applied not only to cases where the land of an occupancy holding was made permanently unfit but also to cases where it was made temporarily unfit for the purposes of the tenancy.[22] In Surendra v. Hari[23] it was held by the High Court that, where land had been let out for agricultural purposes generally, the erection of an indigo factory on any part of such land

---

20. S.C.Mitra, op.cit., p.301.
21. Prosunno v. Jagun (1881) 10 C.L.R. 25.
22. Rajkishore v. Rajani (1907) 37 I.C. 249.
23. (1903) 9 C.W.N. 87 = I.L.R. 31 Cal. 174.

rendered it unfit for the purposes of the tenancy and the landlord was entitled to a permanent injunction, restraining the tenant from erecting the factory. On appeal the Judicial Committee of the Privy Council, overruling the decision of the High Court,[24] held that in determining what was the proper use of a holding regard must be had to the circumstance of each individual case, the size of the holding, the area withdrawn from actual cultivation and the effect of such withdrawal upon the fitness of the holding, taken as a whole, for profitable cultivation. Where the purpose, for which a portion of the land was sought to be withdrawn from actual cultivation, was totally unconnected with agriculture (in the instant case for the establishment of a market), the execution of the design would render the holding unfit for agriculture, for the purpose of which alone the land was let out to the tenants. It was immaterial that the market would occupy not more than one-tenth of the area of the entire holding;circumstances could not affect the nature and character of an unauthorised act.[25] Similarly the construction of a cremation ghat[26] or erection

---

24. Hari v. Surendra (1907) I.L.R. 34 Cal. 718 P.C.
25. Rajkishore v. Rajani (1907) 37 I.C. 249 at 250.
26. Dhirendra v. Radha (1920) 57 I.C. 758.

of a mosque for public worship was held to be misuse of the land so as to render it unfit for the purpose of the tenancy, and for such misuse the landlord was entitled to eject the tenant.[27] In Soman v. Raghubir[28] it was held that where the raiyat converted an agricultural land into an orchard, the land was rendered unfit for the purposes of the tenancy and that was a good ground for ejectment.

In considering whether a particular user of the land materially impaired the value of the land or rendered it unfit for the purposes of the tenancy, regard must be had to sections 76 and 77 of the Bengal Tenancy Act, 1885. Under section 77(1) the tenant had the right to make improvements on his land and 'improvement' was defined in section 76(1) to mean "any work which adds to the value of the holding which is suitable to the holding and consistent with the purpose for which it was let".[29] Section 76(2) set forth a number of works which were to be presumed to be improvements within the meaning of the section until the contrary was shown, subject, however, to the exception that "no work executed by the tenant of a holding shall

---

27. Shreesh v. Esom (1933) I.L.R. 61 Cal. 75.
28. (1896) I.L.R. 24 Cal. 160.
29. Infra, p.262.

be deemed to be an improvement for the purpose of this Act if it substantially diminishes the value of his landlord's property".[30]

The improvement must be consistent with the purpose for which the holding was let out; it must add to the value of the holding and it must be an improvement to the holding in which the construction was made. The Act did not empower a tenant to utilise one holding for the purpose of improving another holding, irrespective of the question whether such use would impair the value of the former holding.[31] Thus the construction of a tank was an improvement, if it was made for the purposes of agriculture;[32] the erection of a dwelling house was an improvement, if it was for the use of the tenant and his family.[33] But if the nature of an agricultural holding was transformed by excavating a tank on one portion and building a house on the remaining portion, so far from this being regarded as an improvement within the meaning of section 76, it would probably be treated as misuse within the meaning of section

---

30. The Bengal Tenancy Act, 1885, sec.76(3).
31. Kamala Ranjan v. Abdul Gafur (1941) 45 C.W.N. 464.
32. The Bengal Tenancy Act, 1885, sec.76(2)(a).
33. Ibid., sec.76(2) (f).

23. The tenant could not be heard to say that the tank and the house would help him in the cultivation of the lands of other holdings, for so far as the holding on which this had been constructed was concerned, there was no improvement; on the contrary, it had been rendered totally unfit for the purpose of cultivation, for which it was created.[34]

Under the Bengal Tenancy Act, 1885 the landlord could not take away or limit the rights of an occupancy raiyat in respect of use of land by contract; the occupancy raiyat could not by contract renounce his rights to use or to make improvements recognized in section 23 of the Act of 1885. It was expressly provided in section 178 (3) (b) of the Act that "nothing in any contract made between a landlord and a tenant after the passing of this Act shall take away or limit the right of an occupancy raiyat to use the land as provided by section 23". Since that clause governed only contracts made after the passing of the Act, contracts restricting the right of user, made before the passing of the Act were valid.

Right to Trees. - Under the Rent Acts of 1859 and 1869, it was held[35] that the zemindar had a right in trees

---

34. Kamala Ranjan v. Abdul Gafur (1941) 45 C.W.N. 464.
35. Sheikh Abdool v. Dataram (1864) W.R.Gape vol.367.

grown on land by the tenant; although the tenant had a right to enjoy all the benefits of the growing timber during his occupation, he had no power to cut down the trees and convert the timber to his own use; the zemindar was entitled to sue for a declaration of his rights in the trees. But during the term of the tenancy the raiyat was entitled to the exclusive possession of the trees on his land.[36] If he cut down the trees, contrary to tarms of of his lease, he was liable in damages.[37]

But after the Bengal Tenancy Act, 1885 was passed, the courts recognized that the zemindar's right to trees was subject to modification or even complete extinction by custom.[38] The case of Nuffer v. Nund afforded an example of the modification of his rights in this respect by custom; in that case it was found that by the custom of the zemindari, the zemindar was entitled to recover only one-fourth share of the value of the produce of the trees, when the raiyats cut them without the consent or permissionnof the zemindar. In the case referred to Patheram C.J., observed that "if that is the case, it must follow that a raiyat has a right to cut down trees without anybody's consent, and consequently

---

36. Shaikh Mahomed v. Bolakee (1875) 24 W.R. 330.
37. Gopeekishen v. Dowlut (1864) 1 W.R. 156.
38. (1888) I.L.R. 22 Cal. 751 f.n.4; Samsar v. Lochin (1896) I.L.R. 23 Cal. 854.

any injunction restraining them for doing so must be wrong".
In Pradyote v. Gopi,[39] it was held that, where the tenants habitually appropriated trees on their holdings with the acquiescence of the landlord, such acquiescence led to a growth of usage entitling the tenants to appropriate trees on their holdings. The Select Committee of the Bill of 1883 had recommended[40] the enactment of a provision that the occupancy raiyat "shall not cut down trees thereon in contravention of any local custom". On the basis of that report the Bengal Tenancy Act, 1885[41] left the raiyat's rights to trees to local custom.

The legal position of the landlord and tenant with respect to trees came to be fully investigated in Nafar v. Ram[42] and the court recognised the proprietary right in trees in favour of the landlord and also the tenant's right under section 23 of the Act to cut down trees on his land without landlord's consent, unless prevented by custom. The Court also drew a distinction between the right to cut down trees and the right to appropriate the timber after they had been felled. Though the tenant could cut down trees, he could not appropriate the timber when so cut. That case also

39. (1910) I.L.R. 37 Cal. 322 at 327.
40. The report dated 14th March, 1884, para. 17 = Selections, p.242.
41. The Bengal Tenancy Act, 1885, sec.23.
42. (1894) I.L.R. 22 Cal. 742; followed in Mohamed v. Ali Fakir (1909) 10 C.L.J. 25; Meyoa v. Gobinda (1917) 41 I.C.679.

dealt with the question of the onus of proof of custom, and held that, under section 23 of the Act, the onus was on the landlord to show that a tenant with occupancy right was debarred from cutting down trees on the land, and not on the tenant to prove a custom giving him the right to do so. The right to appropriate them when cut down, which raised a different question, belonged to the landlord. In that case the landlord filed a suit against ~~their~~ his tenants, who had a right of occupancy, for appropriating trees growing on the land, which they had cut down; it was held that the onus was on the tenants of proving the custom they alleged, giving them the right to sell the trees and, on failure to prove such custom, they were liable to damages. The same principle was reiterated by Mukherjee J., in Pradyote v. Goni[43]:- "It is well-settled that property in the trees is by the general law vested in the zemindar. The tenant is entitled to cut down trees, provided there is no local custom to the contrary, but he can appropriate the trees when felled, only if such appropriation is sanctioned by local custom". Where there was a custom in a village for raiyats to cut down and appropriate agachha or valueless trees for the purpose of cremation and on occasions of village feasts, simply with the permission of the village barua or headman and

43. (1910) I.L.R. 37 Cal. 322 at 327.

without the permission of the landlord, it was held that[44] no action for damages could be maintained.

Though the property in the trees was with the landlord, he was not entitled to enter upon the holding of his tenant and cut down trees during the continuance of the tenancy, without the tenant's consent, as that would be inconsistent with the tenant's right of possession of the trees, so the tenant could successfully resist the landlord's activity in that direction.[45] In Lakhi v. Nabadwip[46] it was held that if an occupancy raiyat covenanted that he would not cut down trees, where there was no custom to the contrary, that contract would not take away his right to cut down trees. It was otherwise with regard to the right of appropriating trees. If any tenant covenanted not to appropriate any trees he would be bound by that covenant even if there was a custom that the tenants of the locality were entitled to appropriate trees.[47]

Such was the position of the raiyats in trees by the customary law as embodied in section 23 of the Bengal Tenancy Act, 1885. But the working of the law proved so

---

44. Samsar v. Lochin (1896) I.L.R. 23 Cal. 854.
45. Kamal v. Madhusudan (1929) I.L.R. 57 Cal. 344.
46. (1926) 31 C.W.N. 192.
47. Ibid., p.195.

unsuccessful that amendment was deemed necessary.[48] The Bill of 1925 gave to the occupancy raiyat complete rights in trees on his land, except that in the case of valuable trees a fee of one-fourth of the value was to be paid to the landlord when the tree was felled or disposed of.[49]

The Bill of 1925 was referred to a Select Committee, which revised it in so many material respects that the Government was unable to accept it without further examination.[50] Subsequently in May 1928 another Bill was prepared and presented to the Bengal Legislative Council in August of that year. That Bill, without being referred to a Select Committee, was considered by the Council and was subsequently passed as the Bengal Tenancy (Amendment) Act, 1928. In the notes on clauses to the Bill of 1928 the changes effected were thus explained:-[51]

"The rights of raiyats regarding trees are not clear and they are practically left to custom which is

---

48. Statement of objects and reasons of the Bengal Tenancy (Amendment) Bill of 1925, para. 6 = The Calcutta Gazette July 12, 1928, part. IV, p.95; also the report of Sir J.H.Kerr Committee of December, 1922, para. 10 = The Calcutta Gazette dated 10th January, 1923, part IV, p.6.
49. Statement of objects and reasons of the Bill of 1925, para.6.
50. Statement of objects and reasons of the Bill of 1928, para.1 = The Calcutta Gazette July 12, 1928, part IV, p.94.
51. Clauses 21 and 22 = The Calcutta Gazette July 12, 1928, part IV, p.98.

variable in different parts of the province. The reference to 'customary rights' in trees in section 23 has been deleted and a new section 23A has been inserted definitely specifying the trees in respect of which the landlord shall have sole rights, provided they were growing on the land before 1928. All rights in respect of all other trees rest in the raiyat. The Select Committee's specification of the trees has been accepted and a sentence has been added to provide for the necessary licence for the landlord to enter upon the land for the purpose of exercising his rights".

The specification of the trees in which the landlord's right was recognized was omitted in consequence of an amendment in the Council. The new section 23A thus declared the rights of an occupancy raiyat in trees:-

"23A. Subject to the provisions of section 23, when a raiyat has a right of occupancy in respect of any land, he shall be entitled -

(i) to plant,
(ii) to enjoy the flowers, fruits and other products of,
(iii) to fell, and
(iv) to utilize or dispose of the timber of,
any tree on such land".

The effect of the amendment of 1928 was that an occupancy raiyat had an absolute right of planting, growing, enjoying or appropriating all kinds of trees on his land.

His right to plant trees could not be defeated by a perpetual injunction on the ground that the roots of the trees were likely to penetrate the foundation of the landlord's building and wall.[52] But the new section was subject to the provisions of section 23. It meant that, in enjoying and appropriating the trees and their products, an occupancy raiyat could not do anything which materially impaired the value of the land or rendered it unfit for the purposes of the tenancy and that no diversion from the original purpose of the tenancy was allowed. He was not entitled to cut down ruthlessly all the trees, as that materially impaired the value of the land.

It was provided in section 178(1) (h) as inserted by the Amending Act of 1928 that "nothing in any contract between a landlord and a tenant made before or after the passing of this Act shall take away or limit the rights of occupancy raiyats in trees on their holdings, as provided in section 23A". That clause puts a veto on all contracts, whether made before or after the passing of the Act, restricting the rights conferred by section 23A. We have seen before[53] that a raiyat at fixed rates was given, by

---

52. Lakshmi v. Tara (1904) I.L.R. 31 Cal. 944.
53. Supra, p.186.

section 18(1)(d), rights similar to those preseribed in section 23A, but such a raiyat, even if he acquired a right of occupancy, was not entitled to the benefit of section 23A with the consequence that section 178(1)(h) which was confined only to occupancy raiyats did not extend to a raiyat at fixed rates with occupancy rights; therefore, there was no bar to a landlord taking away or limiting by contract the rights in trees comtemplated in section 18(1)(d) of the Act.

The imposition of falkar[54] rent on the trees standing on an occupancy holding at the inception of the tenancy, as a consideration for the use and occupation of the demised land, was not unlawful and was not prohibited by the new section 23A and section 178(1)(h) of the Act. The tenant might, however, fell the trees on which falkar was assessed, provided he did not thereby materially impair the value of the land or render it unfit for the purpose of the tenancy,[55] and thus avoid the payment of such rent.

Devolution of occupancy right. - Under the Bengal Rent Act, 1859 the occupancy right was not expressed to be heritable; but it was provided in section 6 of the same

---

54. 'falkar' = right to fruits.
55. Manager Murshidabad Estate v. Hira (1936) 41 C.W.N. 88 = A.I.R. 1937 Cal.51.

Act that "the holding of the father or other person from whom a ryot inherits shall be deemed to be the holding of ryot within the meaning of the section". That provision only referred to the acquisition of the right; the right, when acquired, was nowhere declared to be heritable; the literal meaning of the words used would not necessarily include an hereditary quality in the right. Moreover the nature of the right, being one created by statute, although analogous in some respect to the right of the khoodkashts, could not be ascertained by reference to the rights of the khoodkashts or to custom. Occupancy tenants might have customary or other rights in addition but it was difficult to see how these could assist in determining their rights as occupancy raiyats.[56] Accordingly Peacock C.J., expressed a doubt whether an occupancy right was necessarily heritable.[57] In Jatee v. Mungloo,[58] a distant relation of the deceased occupancy raiyat was not allowed to succeed by inheritance and it was held that the landlord was entitled to let the land to whomsoever he pleased. But according to the Rent Law Commission, 1880 an occupancy right was heritable under the customary law.[59] Similarly Sir John Shore

---

56. A.Phillips, op.cit., p.359.
57. Ajoodhya v. Imam Bandi (1867) 7 W.R. 528 F.B; C.D.Field, Digest, p.39 f.n.9.
58. (1867) 8 W.R.60.
59. Para. 33 of the report.

observed:-[60] "I understand also, that this right of occupancy is admitted to extend, even to the heirs of those who enjoy it".

Whatever might have been the state of things before, the right of occupancy was heritable under section 26 of the Bengal Tenancy Act, 1885 which ran thus:-

"26. If a raiyat dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immovable property:....."

Under that section, an occupancy right was declared to be heritable, subject to any custom to the contrary; the onus would lie on the person alleging that it was not heritable.[61] The right of an occupancy raiyat descended in the same manner as his other immovable property; that is to say the personal law of the raiyat governed the succession to the occupancy right, subject to the peculiarity that, when the raiyat died intestate without leaving any heir and his other property escheated to the Crown, his right of occupancy was extinguished.[62] The Crown could not claim to have possession of the land as the ultimate heir of the deceased holder of a right of occupancy. What happened

---

60. Sir John Shore's Minute dated 18th June, 1789, para.406.
61. M. Finucane and Ameer Ali, op.cit., p.167.
62. The Bengal Tenancy Act, 1885, sec.26.

then to the holding? The statute did not say that it would cease to exist. The holding, being without a tenant, reverted to the landlord.[63] Where one of several occupancy raiyats died, the landlord was entitled to take possession of his share of the holding jointly with the surviving tenants.[64] If the deceased raiyat had created any incumbrances on the holding, being legally entitled to do so, the landlord took it free from incumbrances.[65] If the raiyat was a limited owner, any alienation made by her could be questioned by the landlord on the ground of justifying legal necessity.[66]

Right to transfer holding. - The next question which engaged the attention of the law courts and the litigants in connection with occupancy holdings was their transferability. According to Field, "before the period of British Government alienability was not an ordinary incident of immovable property in India".[67] At the time of

---

63. Muktakeshi v. Pulin (1908) 13 C.W.N. 12; Gurbhu v. Khudaijatunnissa (1925) I.L.R. 4 Pat. 774; Prasad v. Ambica (1929) I.L.R. 9 Pat. 515.
64. Trailokya v. Ambica (1937) 41 C.W.N. 1148.
65. Muktakeshi v. Pulin (1908) 13 C.W.N.12; Contra, Gurbhu v. Khudaijatunnissa (1925) I.L.R. 4 Pat. 774.
66. Prasad v. Ambica (1929) I.L.R. 9 Pat. 515.
67. C.D.Field, his note on "The Transferability of Ryot's Holdings" = Digest, App.No.1, p.164.

the Permanent Settlement of 1793 raiyats' holdings were not transferable. Sir John Shore tells us that they could not sell or mortgage their holdings.[68] Harington agreed with him and said:-[69] "On the whole, therefore, I do not think the ryots can claim any right of alienating the lands rented by them, by sale, or other mode of transfer".

After the Permanent Settlement of 1793, the legislature appears to have adopted the same view. Clause 7 of section 15 of Regulation VIII of 1799 speaks of "a lease-holder or other tenant having a right of occupancy only so long at a certain rent or a rent determinable on certain principles according to local rates and usages be paid, without any right of property or transferable possession". But section 33 of Regulation XI of 1822 provided that "nothing....shall be construed to affect the right of any individual possessing a transferable or hereditary right of occupancy to contest the justness of the demand so made". It may be inferred from this that probably in some places a custom had grown making the holdings of khoodkasht raiyats transferable.[70]

The origin and development of the right to transfer a raiyat's holding can be best explained by an extract from

---

68. Sir John Shore's Minute dated 18th June, 1789, para.389.
69. J.H.Harington, Analysis, vol.III, p.460.
70. The report of the Land Revenue Commission, Bengal, dated 21st March, 1940 vol.I para.43.

a Note prepared by Field:-[71]

"But though alienability is not an ordinary incident of landed property in its early stage, there can be no doubt that the tendency of the development is in this direction, and that in most countries all kinds of property in land sooner or later became alienable. These provinces (Bengal and Behar) form no exception to the operation of this general rule. Once the legislature had declared estates and then patni tenures to be transferable, the idea of alienability as an incident of property in land rapidly developed itself, and we soon find the courts and the legislature dealing with under-tenures which were transferable by their title deeds or by the established usage of the country. That the idea should be extended to ryots' holdings was only a natural progress, and accordingly in many parts of the country the ryots' holdings became to be regulated as transferable. This result was no doubt brought about in some measure by the zemindars bringing these holdings to sale in execution of their own decrees for rent. Saleability for arrears of revenue or rent has usually been the first step towards alienability. The sale of a holding at the request, and therefore with the consent, of the landlord is of course

---

71. C.D.Field, his Note on "The Transferability of Ryots' Holdings" = Digest, Appendex No.1, p.165.

different from a sale without the landlord's consent or even in opposition to his wishes; but once the former kind of sale had become common and usual, the idea of transferability took root and gained ground, and the holding came to be sold without the landlord's consent being asked. Instances of these sales multiplied, and at last a local custom became tolerably well established".

Under the Rent Acts of 1859 and 1869, occupancy rights were not transferable without the landlord's consent, except where it was sanctioned by custom.[72] When holdings were put up to sale in execution of decrees at the instance of the landlord as decree-holder, the transfer so effected was presumed to be made with his consent, but when the sales were in execution of decrees by third parties, the right of transfer without such consent was disputed.[73] Thus in the absence of custom there could be no transfer, voluntary or involuntary without the landlord's consent.[74]

---

72. Sreeram v. Bissonath (1865) 3 W.R.(Act X) 2-3; Ajoodhya v. Imam Bandi (1867) 7 W.R. 528 at 529 F.B; Doorga v. Brindabun (1869) 11 W.R. 162; Munkoo v. Mohabeer (1869) 11 W.R.405; Unnopoorna v..Ooma (1872) 18 W.R.55; Shunkur v. Mirza (1872) 18 W.R. 507 at 508; Bootee v. Moorut (1873) 20 W.R.478; Nurendro v. Ishan (1874) 22 W.R.22 F.B; C.D.Field, Digest, Art.41.
73. M.Finucane and Ameer Ali, op.cit., p.169.
74. Dwarka v. Hurrish (1879) I.L.R. 4 Cal. 925.

If any such transfer was effected except at the instance of the landlord, the transferee acquired no title[75] and the transferee was liable to be ejected.[76]

The existence of a customary right of transferability in a particular district would not, however, justify the raiyat in sub-dividing his holding into different parts and tranferring them to different persons. If such transfers were effected, the landlord would be entitled to treat the transferees as trespassers and eject them.[77] Where a holding was transferable by custom, the mere fact that the transferee's name had not been registered in the landlord's sheristha[78] would not justify him in treating the tenant as trespasser and ejecting him.[79] The receipt of rent from the transferee by the landlord with knowledge of the transfer put an end to the connection of the transferor with the holding.[80] The onus of proof of the transferability of an occupancy holding was upon the person who alleged it.[81]

---

75. Kripa v. Doyal (1874) 22 W.R. 169.
76. Nurendro v. Ishan (1874) 22 W.R. 22 F.B.
77. Tirthanund v. Mutty (1878) I.L.R. 3 Cal. 774.
78. 'sheristha' = Landlord's record of rights.
79. Hurro v. Chintamonee (1865) 2 W.R. (Act X) 19; Karoo v. Luchmeeput (1867) 7 W.R. (C.R.) 15 at 17; Wooma v. Huree (1868) 10 W.R..101; Joy v. Doorga (1869) 11 W.R. 348.
80. Abdul v. Ahmed (1887) I.L.R. 14 Cal.795.
81. Shunkur v. Mirza (1872) 18 W.R. 507; Kripamoyi v. Durga (1887) I.L.R. 15 Cal. 89.

The receipt of rent from the transferee of a non-transferable holding validated the transfer and would operate as recognition of the transferee's occupancy right by the landlord.[82] Acceptance of rent in an indirect way would produce the same result.[83] Thus in Gudadhur v. Khettur it was held that a zemindar, by taking rent due from land purchased by the plaintiff after the plaintiff had deposited it in the collector's treasury, virtually admitted the plaintiff's status as purchaser from the former ryat and that the purchaser had attorned to him. Where a zemindar made a transferee a party to a suit for rent and accepted a decree against him jointly with other persons, he was held to have recognized the transferee as a tenant, although the latter's name was not entered as such in the zemindar's book.[84]

In 1880 for the first time it was proposed to give statutory recognition to the right to transfer occupancy rights and the question was much discussed before the passing of the Bengal Tenancy

---

82. Kubo v. Kishen (1864) W.R. Gape Vol. (ActX) 112; Mirtunjoy v. Gopal (1868) 10 W.R. 466; Bharut v. Gunga (1870) 14 W.R. 211; Allender v. Dwarkanath (1871) 15 W.R. 320; Ameen v. Bhyro (1874) 22 W.R. 493; Gazee v. Chundee (1867) 7 W.R. 250.
83. (1867) 7 W.R. 460.
84. Ram v. Krishno (1874) 23 W.R. 106.

Act, 1885. The Rent Law Commission, 1880, in their report had recommended as follows:-[85]

"We have declared it to be transferable by private sale or gift, and devisable by will; and we have enacted that the consent of the landlord shall not be necessary to the validity of any such transfer or devise.....We have further enacted that a right of occupancy, though saleable in execution of a decree for its own rent, shall not be saleable in execution of any other decree".

Accordingly it was provided in article 50(f) of the Bengal Tenancy Bill of 1883:-

"His interest in the land, shall, subject to the rights reserved to the landlord by this Act, be capable of being transferred, and bequeathed by will in the same manner and to the same extent as other immovable property".

In this regard, Sir C.P. Ilbert, while moving for leave to introduce the Bill in the Legislative Council of India on the 2nd March, 1883, said:-[86]

"Looking at the question of transferability next from the point of view of the occupancy raiyat's interest, the local Government and the Government of India have come[87]

---

85. Para. 32 of the report.
86. Selections, p.58; also statement of objects and reasons of the Bill of 1883, para.40 = Selections, p.200.
87. The report of the Government of Bengal dated 27th September, 1883, para.14 = Selections, p.224.

to the conclusion that, in the absence of evidence of any evil consequences which have already followed from such transfers, or which may be anticipated as likely to occur in the near future, it would be unwise to oppose the growth of the very strong tendency towards transferability which the prevailing customs show to exist in rights of this class in almost all parts of the country. The existence of such a tendancy indicates-what indeed is clear from other evidence - that those most concerned regard the quality of transferability as an important incident of the right, and it can not be doubted that the enactment of a law absolutely forbidding transfer, would, even if it saved existing customs, be regarded as a hardship. I may add that, if the custom of transferability is so widely established as is stated by some very competent authorities, the operation of a law of this sort would be so limited as to be of but little importance".

But the Select Committee was not in favour of giving the right of transfer to an occupancy raiyat. They proposed "to omit the provisions relating to voluntary transfer altogether from the present Bill".[88] Accordingly the provision was deleted from the Bill. Mr. Justice

88. The report of the Select Committee dated 12th February, 1885, para. 16 = Selections, p.403.

Ameer Ali, however, moved an amendment in the Council in these terms:-[89]

"That after section 24 of the Bill the following be added:-

"An occupancy raiyat shall be entitled in Bengal proper to transfer his holding in the same manner and to the same extent as other immovable property:

"(a) Provided, however, that where the right of transfer by custom does not exist, in the case of a sale the landlord shall be entitled to a fee of 10 per cent on the purchasing money.

"(b) Provided also that a gift of an occupancy right in land shall not be valid against the landlord unless it is made by a registered instrument.

"(c) The registering officer shall not register any such instrument except on payment of the prescribed fee for service on the landlord of notice of the registration.

"(d) When any such notice has been registered, the registering officer shall forthwith serve notice of the registration on the landlord".

But the Lieutenant Governor of Bengal vehemently opposed the amendment; firstly, he urged, "the policy was likely to be attended with serious evils in the transfer of lands from the hands of the agricultural classes to those who have no interest in agriculture", secondly, "it

---

89. Selections, p.527.

would be the wisest course to let the practice develop itself and in a few years it would be very much easier to recognize the practice from the fact of the custom having become established". In view of these circumstances he strongly pressed the hon'ble member to withdraw his amendment.[90] The President of the Supreme Council (Lord Ripon) was also of the opinion that "if the amendment were to be adopted, it would at once confer upon the vast number of indigent men the right and the opportunity of mortgaging the land on the unembarrassed condition of which the salvation of themselves and their families depend". Finally his Lordship said that "there is no reason whatever why we should depart from the conclusion at which we originally arrived".[91] Mr. Justice Ameer Ali, then, by leave, withdrew the amendment.

Accordingly the legislature left the question of transferability of an occupancy holding to custom and usage.[92] Only if the holding was transferable by custom, could the raiyat transfer it by gift, sale or otherwise, without the consent of the landlord;[93] but the onus was on the raiyat to prove custom or usage.[94] It was also laid

---

90. Ibid., p.530.
91. Ibid., p.531.
92. The Bengal Tenancy Act, 1885, sections 73, 178 (3) (d),&183 with its illustration(1).
93. Palakdhari v. Manners (1895) I.L.R. 23 Cal. 179 at 180.
94. Manmoth v. Anath (1918) 23 C.W.N. 201 at 202.

down that "in order to prove a custom or usage of transferability, what is necessary to prove is that such transfers have been made to the knowledge and without the consent of the landlord, and that they have been recognised by him either without payment of nazar or upon payment of a nazar, also fixed by custom. The usages to be effective must not be a governing usage, but one which has already grown up". The proof of custom was so stringent that "no such custom or usage has ever been proved and there is not a single reported case where it was held that such a custom or usage had been proved to the satisfaction of the Court. The result, therefore, was that the provision contained in illustration (1) of section 183 as to transfer of occupancy holding of proof of local usage proved nugatory".

---

95. Buzlul v. Satis (1908) 15 C.W.N. 752 at 756.
96. 'nazar' = transfer fee.
97. Illustration (1) of section 183 of the Bengal Tenancy Act, 1885, provided:
"A usage under which a raiyat is entitled to sell his holding without the consent of his landlord is not inconsistant with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That usage, accordingly, wherever it may exist, will not be affected by this Act".
98. S.C.Sen, The Bengal Tenancy Act (Calcutta: M.C.Sarkar & Sons, 1929, 7th Ed.) p.255; The report of the Land Revenue Commission, Bengal dated 21st March, 1940, vol.I, para. 150.

In regard to the transfer of non-transferable occupancy holdings, apart from custom or local use, real difficulties arose and much confusion prevailed. At last in 1914 the Calcutta High Court in the Full Bench decision in Dayamayi v. Ananda[99] removed difficulties and introduced a degree of certainty in the law. In that case the learned judges laid down the following propositions:-

"(1) The transfer of the whole or a part is operative as against the raiyat,

(a) where it is made voluntarily,

(b) where it is made involuntarily and the raiyat with knowledge fails or omits to have the sale set aside.

A sale is made involuntarily where it is in execution of a money decree,,but not of a decree founded on a mortgage or charge voluntarily made.

"(2) The transfer is operative as against the landlord in all cases in which it is operative against the raiyat, provided the landlord has given his previous or subsequent consent. Where the transfer is a sale of the whole holding, the landlord, in the absence of his consent, is ordinarily entitled to enter on the holding; but where the transfer is of a part only of the holding, or not by way of sale,

---

99. (1914) 18 C.W.N. 971 F.B.

the landlord, though he has not consented, is not ordinarily entitled to recover possession of the holding, unless there has been (a) an abandonment within the meaning of section 87[1] of the Bengal Tenancy Act, or (b) a relinquishment of the holding, or (c) a repudiation of the tenancy. Where there has been a relinquishment or repudiation or not, depends on the substantial effect of what has been done in each case.

"(3) The transfer of the whole or a part is operative as against all other persons, where it is operative against the raiyat".

After that decision a case[2] came up in 1920 before the Calcutta High Court where the entire body of landlords obtained a money decree against an occupancy raiyat under them and, in execution of that decree, attached the holding, which was not transferable by custom or usage. The question arose whether, in view of the decision in Dayamayi's case[3], the landlord could attach the non-transferable occupancy holding in execution of the money decree. It was decided by a special Bench of seven Judges in the affirmative and

---

1. Infra, pp.246-47.
2. Chandra Binode v. Ala Bux (1920) I.L.R. 48 Cal. 184 S.B. = 24 C.W.N. 818 S.B.
3. (1914) 18 C.W.N. 971 F.B.

the learned Judges laid down: "The decision of the Full Bench in Dayamayi[3] v. Ananda requires partial modification, namely, the following should be substituted for the first proposition enunciated therein regarding the transfer for value of occupancy holdings apart from custom or local usage:-

"The transfer of the whole or a part is operative as against the raiyat, whether it is made voluntarily or involuntarily".

This modification put involuntary sales on the same footing as voluntary sales of non-transferable occupancy holdings, and overruled the former dicision in Dayamayi's case[3] pro tanto.

The effect of the Full Bench decision in Dayamayi's[3] case on the rights of the landlord in respect of transfer of an occupancy holding was further considered in a series of decisions, amongst which reference may be made to Ramesh v. Daiba[4]. In that case an entire occupancy holding was sold in execution of a money decree as well as a mortgage decree and thereafter the raiyat took a sub-lease from the transferee and continued to remain in possession of some culturable plots and homestead forming part of the lands of the tenancy but no longer paid rent to the landlord,

---

4. (1924) 28 C.W.N. 602.

though there was no proof of refusal to pay rent and the landlord did not recognise the auction purchaser. It was held, in a suit by the landlord against the transferee for ejectment, that upon the facts found there was in law no abandonment or repudiation of the tenancy by the raiyat, and the landlord, not having in consequence the right to present possession, was not competent to eject the transferee, but that in a properly framed suit he would be entitled to a declaration that the transferee had no rights in the lands as against the landlord. In delivering[5] the judgement of the Court Rankin J., observed:-

"One has to find whether nothing is left in the tenant which would prevent the zemindar from recovering the possession from the person who claims under the transfer. The landlord has to show that he is entitled to possession of the land now".

The considerable difficulties arising from the non-transferable nature of occupancy holding was brought to the attention of Government.[6] In Dayamayi's case the Full Bench observed:-

"We would only add that the uncertainty as to the transferability of holdings has been one of the most fruitful source of litigation, and it is urgently necessary

---

5. Ibid., p.609.
6. (1914) 18 C.W.N. 971 at 991 F.B.

that it should be set at rest by the legislature".

In 1921 the matter was taken up by the Government; a strong committee under the chairmanship of Sir J.H.Keer was appointed in August of that year to consider and report to Government on necessary amendments to the Bengal Tenancy Act, 1885. The Committee submitted their report together with a preliminary draft of a Bill on the 19th December, 1922 recommending inter alia recognition of the right to transfer occupancy holdings[7]: A Bill, based substantially on the draft prepared by the committee, was introduced in the Bengal Council on the 3rd December, 1925. In the statements of objects and reasons of that Bill, it was stated[8]:-

"The difficulties in the existing law regarding the transfer of occupancy holdings were brought to the notice of Government by the High Court, which represented the desirability of legislation to make it clear whether, in the absence of a usage entitling a raiyat to sell his holding without the landlord's consent, such a sale is void ab initio or merely voidable at the will of the landlord. It is provided to recognise the prevalent practice and to give to the occupancy tenant a right of transfer.

---

7. The report of Sir J.H.Keer Committee of December 1922, paras. 7, 8 and 9 = The Calcutta Gazette dated 10th January 1923, part IV, pp.4-5.
8. para. 4 = The Calcutta Gazette dated July 12, 1928, part IV, p.95.

At the same time it is desirable to secure to the landlord the premium which in most parts of Bengal he now levies as the price of his recognition of the transferee as his tenant, and also to protect him against undesirable tenants. The Bill, therefore, includes provisions for the payment of a transfer fee to the landlord, and also gives him the right to have the holding transferred to himself on payment to the transferee of the consideration money and 10 per cent compensation. The transfer fee will not be payable in the case of a transfer by bequest in favour of a natural heir, nor will the landlord have the right to purchase the holding if the transfer is of this kind or is made to a co-sharer in the tenancy".

We have noted before[9] that Bill of 1925 was referred to a Select Committee, which revised the Bill in so many material respects, that Government was unable to accept it without further examination. In 1928 Government, after taking further advice, prepared a fresh Bill. In the course of discussion of the Bill of 1928, Mr.F.A. Sachse, speaking of the necessity of such a provision legalising transfer of occupancy holdings, said:-[10]

"In 1885 it was seriously proposed to make occupancy rights transferable and also to make the provision for pre-emption. The idea was given up because the

---

9. Supra, p.197.

10. Bengal Legislative Council Proceedings, 1928, vol.XXX, No.2, p.426.

legislators of that time thoughtthat they did not know enough of local custom. Now that 43 years have passed and records of rights have been prepared for nearly all districts of Bengal, we think we know something about local custom and we have drafted all these provisions with the purpose of converting common practice into law and also of making the law clearer and more definite. We have been guided by what we consider to be the local custom in a majority of districts of Bengal. We quite admit that our Bill will not suit the custom of every district, much less every sub-division of a district, but it is quite impossible to have a separate Tenancy Act for each district. Therefore we have drafted these provisions with the idea that they will suit the majority of the districts of Bengal".

Accordingly the legislature, by the Amending Act of 1928, gave statutory recognition to the customary right to transfer occupancy holdings in section 26B which ran thus:-

"26B. The holding of an occupancy raiyat or a share or a portion thereof, together with the right of occupancy therein, shall, subject to the provisions of this Act, be capable of being transferred in the same manner and to the same extent as other immovable property".

The right to transfer an occupancy holding was, however, subject to two conditions: (a) the payment of salami called

the landlord's transfer fee[11] and the landlord's right of pre-emption.[12] The landlord could not take away the right of transfer from the raiyat by any contract with him.[13]

The year 1938 brought new benefits to the Bengal raiyats. The legislature, under the Amending Act of that year, abolished the landlord's right of salami and pre-emption. An occupancy raiyat was left free to transfer his holding or part thereof without payment of any fee to his landlord and the landlord had no longer the right to oust the transferee by exercising the right of pre-emption. The Act rather gave a right of pre-emption to a co-sharer with the occupancy raiyat when a portion or share of the holding was transferred with certain exceptions.[14] It was ~~ensured~~ intended that the right of pre-emption given to the co-sharer would help to maintain the consolidation of holdings and prevent property from passing from the family into the hands of strangers.

Every transfer of an occupancy holding must be

---

11. The Bengal Tenancy Act, 1885, sections 26D, 26E, 26H and 26J as amended by the Act of 1928; Notes on clause 23 of the Bill of 1928 = The Calcutta Gazette dated 12th July, 1928, part IV, p.98.
12. The Bengal Tenancy Act, 1885, sec.26F; Notes on clause 23 of the Bill of 1928.
13. The Bengal Tenancy Act, 1885, sec.178(1)(g).
14. Ibid., sec.26F, as amended by the Act of 1938.

made by registered instrument except in cases of a bequest or a sale in execution of a decree.[15] The instrument must be accompanied by a notice giving particulars of the transfer together with the process fee for service of the notice on the landlord or landlords who were not parties to the transfer.[16] If the transfer was only of a portion or share of the holding, similar notice and process fee must be filed for service of the notice on all the other co-sharer tenants of the holdings who were not parties to the transfer.[17] In the case of bequest of a holding or portion or share thereof, notice for service upon the landlord or landlords and process fee must be filed before the grant of probate or letters of administration by the court.[18] No court or Revenue officer would confirm the sale of a holding or portion of share thereof in execution of a decree or a certificate, nor would a court make a decree or order absolute for foreclosure of a mortgage, until the purchaser or mortgagee filed notice and process fee for service upon the landlords[19] and also for service upon co-sharer tenants.[20]

---

15. Ibid., 26C(1) as amended by the Act of 1938.
16. Ibid.,
17. Ibid.,
18. Ibid., sec.26C(2).
19. Ibid., sec.26C(3).
20. Ibid., sec.26C(4).

After amendment by the Act of 1928 an occupancy holding was transferable by sale, gift, will, exchange or mortgage. The only restriction was that the raiyat could not enter into a complete usufructuary mortgage[21] for a period exceeding fifteen years.[22] By the Amending Act of 1938 it was further declared that "no other form of usufructuary mortgage so entered into after the commencement of the Bengal Tenancy (Amendment) Act, 1928, shall have any force or effect".[23]

We may now recapitulate that before and after the Permanent Settlement of 1793 the raiyat had no right of transfer. Under the Rent Acts of 1859 and 1869 an occupancy raiyat could not transfer his holding, except with the consent of his landlord, unless the custom of the country or locality authorised such transfer. The Bengal Tenancy Act, 1885 had no specific provision for

---

21. Complete Usufructuary mortgage means "a transfer by a tenant of the right of possession in any land for the purpose of securing the payment of money or the return of grain advanced or to be advanced by way of loan upon the condition that the loan, with all interest thereon, shall be deemed to be extinguished by the profits arising from the land during the period of the mortgage". (The Bengal Tenancy Act, 1885, sec.3(3) as amended by the Act of 1928).
22. Ibid., sec.26G(1).
23. Ibid.,

transfer of occupancy holdings but declared that the right to transfer, if it existed by custom, could not be taken away by any contract entered into between the landlord and the raiyat. By the Amending Act of 1928, however, an occupancy holding was made transferable in the same manner and to the same extent as other immovable property, subject to payment of landlord's fee and pre-emption. But the Amending Act of 1938 abolished those rights of landlords; rather it gave the right of pre-emption to a co-sharer with an occupancy raiyat. The Act of 1928 put the only beneficial restriction on the rights of an occupancy raiyat that he could not enter into a complete usufructuary mortgage for a period exceeding 15 years.

Right to sub-let. - The right to sub-let was an important incident of a raiyat's holding. At first sight it might appear to be inconsistent with the usual conception of the right of a raiyat, he being regarded as a cultivator of the soil.[24] But there was no such inconsistency. In Dhunput v. Gooman[25] the learned judges said that "they may not be cultivators at all themselves; they may cultivate their land by hired labour or by under-tenants". Acquisition

24. The report of the Rent Law Commission, 1880, para.13.
25. (1864) W.R. Gape vol.(Act X) 61.

of land for the purpose of cultivation was all that was required to make a lessee a raiyat.[26] It was by no means necessary that he should be an actual cultivator.[27] A raiyat did not become a middleman, simply because, instead of cultivating the land, he erected shops on it, let them out and received rent from the shopkeepers.[28] A raiyat with a right of occupancy might, for various reasons, be prevented from cultivating all his lands and it would be extremely hard, if the privilege of sub-letting be denied to him. The legislature, therefore, very wisely recognised his right occasionally to let out his land or portion of it to under-raiyats.[29]

Under the Rent Acts of 1859 and 1869, a raiyat could sub-let his land without incurring forfeiture of his tenancy[30] but he could not, by sub-letting, alter the character of the holding.[31] It was also held in a number of cases[32] that the mere fact of sub-letting did not make the raiyat

---

26. The Bengal Tenancy Act, 1885, sec.5(2); Ram v.Lukhee (1864) 1 W.R. (C.R.) 71; Kalee v. Ameerooddeen (1868) 9 W.R. 579.
27. Durga v. Umdatannissa (1872) 9 B.L.R.113.
28. Khujoorunnissa v. Ahmed (1869) 11 W.R. 88 at 89.
29. S.C.Mitra, op.cit.p.305.
30. Kalee v. Ram (1868) 9 W.R. 344; Haran v. Mookta (1868) 10 W.R.113; Khoshal v. Joynooddeen (1869) 12 W.R. 451; Jumeer v. Goneye (1869) 12 W.R.110.
31. Karoo v. Luchmeeput (1867) 7 W.R. (C.R.) 15 at 17.
32. Ram v. Lukhee (1864) 1 W.R. (C.R.)71; Karoo v. Luchmeeput (1867) 7 W.R. (C.R.) 15 at 16; Durga v. Kalidas (1881) 9 C.L.R.449.

a middle-man. An occupancy raiyat could grant even a mukarari lease to another, but it would be binding as between the contracting parties only and did not affect the rights of the landlord.[33] Where the landlord, however, gave the raiyat power to sub-let, the lessee obtained rights against both the landlord and the raiyat.[34] A lessee could not grant an under-lease for a longer term than his own[35] and sub-lessees had no more right to use the land in contravention of the terms of the original lease than their lessors had.[36]

Under the Bengal Tenancy Act, 1885 the legislature simply codified the existing case law with modifications. In this regard Sir Steuart Bayley in one of the debates in Council said:-[37]

"We have not felt it possible to interfere with the long-established right of sub-letting. This existence of this right is admitted in section 6 of the Act X of 1859, and the authorities consulted have almost unanimously declared that it is impossible now to interfere with it.

---

33. Dumree v. Bissessur (1870) 13 W.R.291 at 292.
34. Nehaloonissa v. Dhunoo (1870) 13 W.R. 281.
35. Hurrish v. Sreekalee (1874) 22 W.R. 274; Ranee Shoorut v. Charles Binnay (1876) 25 W.R.347.
36. Monindro v. Muneer (1873) 20 W.R. 230.
37. Selections, p.435.

Moreover, if the tendency to alienate, by way of transfer, is not allowed free play, it must, following the line of least resistence, force an outlet in sub-letting...All that we have felt ourselves able to do in this direction is to provide in a subsequent portion of the Bill (sec.85),that a sub-lease, given without the landlord's consent, shall not be valid against him unless registered, and that no sub-lease for a term of more than nine years shall be registered."

On the basis of the report[38] of the Select Committee, the law on the subject was enacted in section 85 of the Act which ran thus:-

"85. (1) If a raiyat sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord, unless made with the landlord's consent.

"(2) A sub-lease by a raiyat shall not be admitted to registration if it purports to create a term exceeding nine years.

"(3) Where a raiyat has, without the consent of his landlord, granted a sub-lease by an instrument registered before the commencement of this Act, the sub-lease shall not be valid for more than nine years from the commencement of this Act."

Under that section an occupancy raiyat was entitled to sub-let but in order that the sub-lease might be valid against his landlord, it must comply with two conditions:- (a) it must

---

38. Para 37 of the report dated 12th February 1885 = Selections p.406.

be by a registered instrument, and (b) it must be for a term not exceeding nine years. Apparently if an under-raiyati lease was effected by a registered document and was not for more than nine years, the question of landlord's consent was not of much importance; it was valid whether he consented or not. An under-raiyat living under the protection of the raiyat could effectively resist dispossession by the superior landlord.[39] The consent of the landlord could not validate a lease which was in contravention ~~of section~~ of section 85(2).[40] That clause provided that "a sub-lease by a raiyat shall not be admitted to registration, if it purports to create a term exceeding nine years." It was construed to mean that a sub-lease of a holding without the consent of the landlord, though created by a registered instrument for a period exceeding nine years was altogether void.[41]

---

39. Mahomed v. Choa Lal (1910) 13 C.L.J. 499.
40. Madan v. Tarini (1919) 54 I.C. 625.
41. Srikant v. Saroda (1898) I.L.R. 26 Cal. 46; Telam v. Adu (1913) 17 C.W.N. 468.

It was observed that there was nothing in section 85 authorising the Court to split up the contract of sub-letting into two parts, a valid portion extending to a period of nine years and an invalid portion for the remainder of the term.[42] It was equally void if the sub-lease was otherwise than by a registered document.[43]

There were conflicting decisions on the question whether a sub-lease granted in contravention of section 85 of the Act was binding between the parties and their representatives or was absolutely void. The matter ultimately came up before a Full Bench of the Calcutta High Court in Chandra v. Amjad.[44] In that case the whole law on the point was thus summarised:-

"Where the lease, purporting to be of a permanent character, is granted on the face of the document, by a raiyat (not being a raiyat holding at a fixed rate) to an under-raiyat, the lease is not operative as a permanent lease between the raiyat and the under-raiyat. But as the tenancy of an under-raiyat may be created without a written lease, the grantee in such a case is an

---

42. Srikant v. Saroda (1898) I.L.R. 26 Cal. 46 at 48.
43. Peary v. Badal (1900) I.L.R. 28 Cal. 205.
44. (1920) I.L.R. 48 Cal. 783 F.B.

under-raiyat who holds otherwise than under a written lease and his tenancy is liable to be terminated in the manner provided by section 49 (b); till the tenancy has been terminated, the grantor can not treat him as a trespasser.

"Where the lease, purporting to be of a permanent character, is granted by a person, who, on the face of a document, professes to have a higher status than that of a raiyat (for example, that of a tenure-holder or a raiyat at fixed rate), the grantee, when his title as permanent lessee is challenged by his grantor, may invoke the aid of the doctrine of estoppel and plead that the grantor cannot be permitted to prove the falsity of the recitals in the document (on the faith of which he took the lease) so as to enable him to derogate from his grant.

"Where the lease, purporting to be of a permanent character is given by a person who, on the face of the document, profess to have a higher status than that of the raiyat (for example, that of a tenure-holder or a raiyat holding at a fixed rate) and the grantee invokes the aid of the doctrine of estoppel in answer to a challenge of his title as permanent lessee by his grantor,

it may be a matter for argument whether such plea may be defeated by the grantor on proof that they had conspired by false recitals to evade the provisions of the statute."

In Jaladhar v. Amrita[45] it was held that the estoppel available against the raiyat would not be available against the person who purchased the interest of the raiyat at an execution sale and acquired a new title from the landlord.

A question which often arose was the effect of a stipulation in a sub-lease for renewal after the expiry of the statutory period of nine years. It was held that such a renewal clause was valid and did not contravene the provisions of section 85[46] and the under-raiyat could not, on the expiry of the term, be ejected without an offer of a fresh lease on a fair rent.[47] When an under-raiyati lease for nine years provided that, upon the expiry of the term of the kabuliat, a fresh settlement would be made and, until

---

45. (1927) 105 I.C. 641.
46. Ali v. Nayan (1903) 15 C.L.J. 122; Lani v. Muhammad (1915) 20 C.W.N. 948; Sulachana v. Kali, A.I.R. 1925 Cal. 516.
47. Ali v. Nayan (1903) 15 C.L.J. 122.

it was made, the condition in the kabuliat would remain in force, it was held[48] that such a contract of tenancy between the raiyat and an under-raiyat was valid in law, so far as the contracting parties were concerned. A provision for renewal in a lease does not impart permanency[49] but the terms of re-settlement must not be vague. If the conditions of re-settlement were specific as to the term of years and if the rental was specifically stated, the under-raiyat could, in a suit for ejectment by the raiyat, plead in defence his right to specific performance of the covenant for renewal.[50] Where the covenant for such a renewal did not state the terms of renewal, the new lease would be for the same period and on the same terms as the original lease in respect of all the essential conditions thereof, except the covenant for renewal itself.[51] If the lease did not state by whom the option was exercisable, it was held[52] that it was exercisable, not merely by the lessee personally, but also

---

48. Abdul v. Abdul (1911) 16 C.W.N. 618 at 619-20.
49. Secretary of State v. Forbes (1912) 16 C.L.J. 217.
50. Surendra v. Dina Bandhu (1908) 13 C.W.N. 595 at 596.
51. Lani v. Muhammad (1915) 20 C.W.N. 948; Secretary of State v. Forbes (1912) 16 C.L.J. 217 at 218.
52. Secretary of State v. Forbes (1912) 16 C.L.J. 217 at 218.

by his representative in interest. A lessee, entitled to a renewal of the lease on the original terms, was entitled to refuse to accept a renewal on conditions essentially different from the terms of the original grant and calculated to prejudice seriously the position of the lessee.[53]

Such was the rights of an occupancy raiyat as regards sub-letting of his land before the Bengal Tenancy (Amendment) Act, 1928. That amendment greatly enlarged his rights by repealing section 85 of the Act. As a result an occupancy raiyat was free to sub-let his holding without any restrictions. The landlord could not take away his right to sub-let by any contract.[54]

Right to surrender holding:- A raiyat, whether occupancy or non-occupancy or mokarari or non-mokarari, had the right to surrender his holding. In this regard the learned judges of the Judicial Committee of the Privy Council said:-[55]

"The right of relinquishment is a privilege given to the tenants, by means of which they may restrict the

---

53. Ibid.,p.219.
54. The Bengal Tenancy Act, 1885, sec. 178 (3)(d).
55. Ram v. Ranigange Coal Association (1898) I.L.R. 26 Cal. 29 at 37 P.C.

lease, and establish their tenure upon a new basis, or may extinguish the lease altogether; and the tenants cannot avail themselves of that privilege to any extent, unless they strictly observe the conditions which are either expressed or are plainly implied in the lease itself".

Under section 19 of the Bengal Rent Act, 1859, and section 20 of the Bengal Act, 1869, any raiyat who desired to relinquish the land held or cultivated by him was at liberty to do so provided he gave notice of his intention in writing in or before the month of Jeyt (May) in districts where Fasli[56] year prevailed and in or before the month of Pous (January) in districts where the Bengali calendar[57] prevailed, of the year preceding that in which the relinquishment was to have effect. If he failed to give such notice and abandoned the land and the land was not let to any one else, he continued to be liable for the rent. If the landlord or his agent refused to receive the notice, the raiyat could apply on unstamped paper to the collector, who had then to serve the notice of relinquishment

---

56. 'Fasli' year commences from the first day of Aswin (September) vide the original Bengal Tenancy Act, 1885, sec.3(11).
57. Bengali calendar commences from the first day of Baisak (April); ibid.

on the landlord. A verbal notice of relinquishment was, therefore, not sufficient[58] except in the case of an utbandi raiyat.[59] If the landlord let the land to any ~~all~~ other persons, the raiyat could not be held liable for the rent, even though he had not given notice of relinquishment.[60] In one case[61] it was said that, where the tenant was found to have taken steps required by law in furtherance of his intended relinquishment, it was for the landlord to prove his continued possession. But where the tenant had not taken the necessary steps, it was for him to prove that the landlord took possession of the land and enjoyed the profits either by holding it in his khas possession[62] or by letting it to others. The question how far a surrender by one tenant-in-common affected the rights of the others created difficulties. It was held[63] that where a member of a joint family was registered as jotedar[64] in the zemindar's seristha, not for himself only but as manager of a Dayabhaga family,

---

58. Bonomalee v. Delu (1875) 24 W.R.118.
59. Kenny v. Issur (1864) W.R.Gape vol. (Act X) 9.
60. Mahomed v. Shunker (1869) 11 W.R.53.
61. James v. Ram (1867) 8 W.R.221.
62. Khas possession is own actual possession.
63. Bykuntnath v. Bissonath (1868) 9 W.R.268.
64. 'Jotedar' = holder of a jote.

his relinquishment of the holding was not sufficient to authorise the zemindar to treat it as a surrender by all, and to make a settlement of the land with others. A fortiori this ruling would apply if the tenants were Muslims. Though most types of raiyat could relinquish their land, it was held that a raiyat who had taken a lease in writing for a fixed period could not do so[65] and a raiyat holding under a lease for a short-time could give up the land at the end of the term without giving a notice of relinquishment to the landlord.[66] But a term in a kabuliat whereby the lessee undertook that he and his heirs would never relinquish the jotè, was held[67] not to bar their doing so, provided they followed the procedure established by law. A tenant holding for a term of years and sub-letting his land could not, by surrendering his own term to the landlord, determine the interest of his under-tenant.[68] It was also held[69] that part of a holding could not be surrendered.

---

65. Kashee v. Onraet (1866) 5 W.R. (Act X) 81.
66. Tiluck v. Mahabeer (1871) 15 W.R. 454.
67. Gopal v. Tarinee (1868) 9 W.R. 89.
68. Heeramonee v. Gunganarain (1868) 10 W.R. 384.
69. Saroda v. Hazee (1866) 5 W.R. (Act X) 78.

The Bengal Tenancy Act, 1885 followed the principles of the earlier laws. In this regard Sir Steuart Bayley in one of the debates in Council said:-[70]

"We have retained the old substantive law in regard to the raiyat's right to surrender, but we have added the clauses to assist the Court in deciding under what circumstances he shall be liable for the rent of the following year in case a formal notice was not served three months before the surrender."

The Act of 1885 provided the law on the subject in section 86 which ran thus:-

"86. (1) A raiyat (or under-raiyat),[71] not bound by lease or other agreement for a fixed period, may, at the end of any agricultural year, surrender his holding.

(2) But, notwithstanding the surrender, the raiyat (or under-raiyat) shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(3) When a raiyat (or under-raiyat) has surrendered his holding, the Court shall, in the following cases for the purposes of sub-section (2), presume, until the contrary is shown, that such notice was so given, namely:-

---

70. Selections, p.444.
71. The words "or under-raiyat" were inserted here and in other sub-sections by section 23 of the Bengal Tenancy (Amendment) Act, 1938 (Bengal Act VI of 1938).

(a) if the raiyat (or under-raiyat) takes a new holding in the same village from the same landlord during the agricultural year next following the surrender;

(b) if the raiyat (or under-raiyat) ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

(4) The raiyat (or under-raiyat) may, if he thinks fit cause the notice to be served through the Civil Court within the jurisdiction of which the holding or any portion of it is situate.

(5) When a raiyat (or under-raiyat) has surrendered his holding the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(6) When a holding is subject to an incumbrance secured by a registered instrument, (or when there is an under-raiyat on the holding or part thereof) the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer (or the under-raiyat, as the case may be)[72]

(7) Save as provided in sub-section (6) nothing in this section shall affect any arrangement by which a raiyat (or under-raiyat) and his landlord may arrange for a surrender of the whole or a part of the holding."

According to sub-section (1) of that section a raiyat, not bound by a lease or other agreement for a fixed period, had the right, at the end of any agricultural year, to surrender his holding. The right could not be taken away by the landlord by any contract with the raiyat,[73]

---

72. These words within brackets were inserted by section 54 of the Bengal Tenancy (Amendment) Act, 1928 (Bengal Act IV of 1928).
73. The Bengal Tenancy Act, 1885, sec. 178 (3)(c).

but it could only be exercised subject to the conditions laid down in the section. It was necessary that the raiyat should give the landlord three months notice of his intention to surrender. As surrender was possible only at the end of the agricultural year, it necessarily follows that the notice must be given within the first nine months of such year. The notice need not be in writing[74] and the raiyat had the option of causing the notice to be served through the Civil Court within the jurisdiction of which the raiyati land was situate.[75] Sub-section (3) laid down certain presumptions with respect to notice in favour of the raiyat. If the raiyat took settlement of fresh lands in the village from the same landlord during the agricultural year next following the surrender, the court would presume, until the contrary was shown, that notice has been given. A similar presumption would be drawn from the raiyat ceasing to reside in the village for at least three months before the end of the agricultural year in which the surrender was made. Apart from these presumptions, the fact that the landlord

---

74. M.Finucane and Ameer Ali, op.cit.,p.383.
75. The Bengal Tenancy Act, 1885, sec. 86(4).

let the land to another person, would be evidence of knowledge on the part of the landlord of the raiyat's intention to surrender.[76]

If the raiyat failed to notify his intention to surrender at least three months before he actually surrendered, he was liable for the rent of the holding for the agricultural year next following the date of his surrender. The heirs of a raiyat, dying intestate were also liable to pay rent, whether they occupied the land or not, unless they surrendered the holding or did something from which a surrender might be presumed; mere non-cultivation of the land did not necessarily amount to a surrender.[77]

The surrender must be of the entire holding, a portion of it could not be surrendered. The reason was thus explained by Seton-Karr and Macpherson J.J. in an early case:-[78]

"We know of no law or custom by which a raiyat is justified in throwing up a portion of his jote and in

---

76. M.Finucane and Ameer Ali, op.cit.,p.384.
77. Peary v. Kumaris (1892) I.L.R. 19 Cal. 790 at 793.
78. Saroda v. Hazee (1866) 5 W.R. (Act X) 78.

keeping that portion which happens to suit his convenience, and which may be....the very portion which confers value on the remainder of the note, and one without which no fresh tenant will be found to enter on an engagement."

But by arrangement with the landlord even a portion of the holding might be surrendered.[79] A co-tenant also could surrender his share or portion of the holding without the consent of his co-tenants if the landlord accepted the surrender.[80] In such a case it did not enlarge the right of the other non-surrendering co-sharers so as to entitle them to claim the share relinquished by other co-sharers or deprive the landlord of what would ordinarily belong to him.[81]

To guard against collusive surrenders in fraud of the rights of third parties it was provided in section 86(6) of the Act that when the holding was subject to an incumbrance secured by a registered instrument or when there

---

79. The Bengal Tenancy Act, 1885, sec.86(7).
80. Sheikh v. Baikunta (1910) 15 C.W.N. 680.
81. Peary v. Radhika (1903) 8 C.W.N.315.

was an under-raiyat on the holding, the surrender was not valid unless it was made with the consent of the landlord and the incumbrancer or the under-raiyat as the case might be.[82]

By the Amending Act of 1928, an under-raiyat was included in section 86(6) to remove doubts as to whether he was entitled to protection against collusive surrenders. Before that amendment, an under-raiyat was only protected if he held under a registered instrument.[83] After the amendment it was clear that he would be protected, even if his interest was not secured by a registered instrument. The effect of section 86(6) was that surrenders in defeasance of the claims of incumbrancers and under-raiyats were invalid, whether the landlord consented to the surrender or not.[84] If a raiyat created a charge or mortgage or a sub-lease or any other right or interest in derogation of, or in limitation to, his own and such incumbrance was

---

82. The report of the Select Committee dated 12th February, 1885, para 38 = Selections, p.406; Sir Steuart Bayley's speech dated 27th February 1885 while moving that the report of the Select Committee be taken into consideration = Selections, p.444; the report of the Bengal Government dated 15th September,1884, para 69 = Selections,p.380.
83. Nilkanta v. Ghantoo (1900) 4 C.W.N.667.
84. Ramkumar v. Rameshwar (1917) 38 I.C.523.

secured by a registered instrument or if there was an under-raiyat on the holding or part thereof, a surrender of the holding would be invalid unless made with the consent of the landlord, as well as of the incumbrancer or the under-raiyat as the case might be.[85] In Mahammad v. Sheikh[86] Woodroff J., Observed that in a case of surrender unlike that of abandonment, the landlord taking the tenant's right should equitably be bound by the previous transaction of the tenant by way of mortgage.

The provisions of section 86(6) of the Act of 1885 as to the effect of surrender on incumbrances created by a raiyat followed the contemporary principles of English law with exceptions. Channel J., thus laid down the English law on the subject:-[87]

"The law is that a lessee can only give title to his lessor by a surrender to the same extent that he could give it to another person by his assignment. If the lessee has created under-leases, the under-leases remain, notwithstanding the surrender; the lessee can not assign his term to any one else so as to put an end to those under-leases.

---

85. The Bengal Tenancy Act, 1885, sec.86(6); Raghunath v. William Cox (1914) 19 C.W.N.268; Bisheswar v. Ali (1921) 63 I.C.500.
86. (1914) 21 C.L.J.185 at 186.
87. Quoted in Raghunath v. William Cox (1914) 19 C.W.N.268 at 269.

But that, I think, is an example of what he can and can not do; the point is that he has no power to effect by surrender anything that he could not do by assignment to a third person; the reason being that he can not convey to his landlord any more than to any one else anything that he has not got himself."

Before the Amending Act of 1928, there was a conflict of opinion on the question whether, after transferring a portion of his non-transferable occupancy holding, an occupancy raiyat could surrender to his landlord the portion so transferred, either by surrender of that portion alone or by surrender of the whole. In a Full Bench decision in Mahsenuddin v. Bhagaban[88] it was held that an occupancy raiyat was not competent to do so, for, after parting with his interest in the property, he had nothing left enabling him to deal with that interest; the landlord was therefore not entitled to khas possession as against the transferee of the portion. After the Amending Act of 1928 the transfer of an occupancy holding was valid under section 26 B[89] of the Act against the landlord and the transferee of a

---

88. (1920) I.L.R. 48 Cal. 605 F.B.
89. Supra, p. 220.

part of such holding became a co-tenant with the transferor. The transferor, therefore, could not surrender the part or the whole of the holding after the transfer. He could at best surrender the part not transferred by an arrangement with the landlord.

The Act was silent as to the mode of surrender. It was held that there might be a valid surrender of a holding without a written document,[90] even though the original lease was registered.[91] But where the original lease was registered, the surrender of a portion of a tenancy with an abatement of rent could only be effected by a registered instrument, as in such a case the surrender involved a variation of the original contract.[92]

Right to abandon holding:- Raiyats of all classes had the right to abandon their holdings at any time they liked. There was no provision in this matter in the Rent Acts of 1859 and 1869. But it was held[93]

90. Imam Bandi v. Kamleswari (1886) I.L.R. 14 Cal. 109 at 119 P.C.; Khonkar v. Ali (1900) 5 C.W.N. 351; Elias v. Manoranjan (1918) 22 C.W.N. 441.
91. Poran v. Indra (1919) I.L.R. 47 Cal. 129.
92. Gopal v. Harendra (1921) 63 I.C. 483.
93. Ram v. Gora (1875) 24 W.R.344; Muneeruddeen v. Mahomed (1866) 6 W.R. 67; Nuddear v. Modhoo (1867) 7 W.R.153; Huro v. Gobind (1869) 12 W.R. 304; Mutty v. Gundur (1873) 20 W.R. 129; Boidonath v. Annurna (1881) 10 C.L.R. 15; Golam v. Golap (1882) 10 C.L.R. 499.

that when a raiyat, without giving notice, went away from the land he occupied and neither cultivated it nor paid rent, the landlord was justified in assuming that he had relinquished it; the raiyat had no right to ask to be re-instated in possession on the ground that he never formally relinquished the land. But non-cultivation of a small portion of an ancestral jote by the admitted holders for one year owing to their minority, was held not to amount to relinquishment.[94] It was also held[95] that when a raiyat sold his land, terminated occupation and ceased to cultivate or hold it, he might be regarded as having abandoned it and the landlord might recover possession from the transferee. It was not necessary that the relinquishment should be in writing.[96]

The Bengal Tenancy Act, 1885 laid down the rules of abandonment of a holding in section 87 which ran thus:-

"87. (1) If a raiyat or under-raiyat[97] voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it

---

94. Radha v. Kalee (1872) 18 W.R. 41.
95. Nurendra v. Ishan (1874) 22 W.R. 22 at 26 F.B.
96. Muneeruddeen v. Mahomed (1866) 6 W.R. 67.
97. The words "raiyat or under-raiyat" here and in other sub-sections were substituted for the word 'raiyat' by section 50 of the Bengal Tenancy (Amendment) Act, 1928.

falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which raiyat or under-raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(2) Before a landlord enters under this section, he shall file a notice in the prescribed form in the collector's office, stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the collector shall cause a notice to be pub-lished in the prescribed manner.

(3) When the landlord enters under this section, the raiyat or under-raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy raiyat, six months, from the date of the publication of the notice; and thereupon the Court may, on being satisfied that the raiyat or under-raiyat did not voluntarily abondon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

(4) Where the whole or part of a holding has been sub-let by a registered instrument, the landlord shall, before entering under this section, on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rate paid by the raiyat or under-raiy at who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that raiyat or under-raiyat. If the sub-lessee refuses or neglects within two months (98) to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in sections (1) and (2)."

---

98. The words "two months" were substituted for the words "a reasonable time" by section 56(b) of the Amending Act of 1928.

The object of that section can be best explained from the following extracts from the speeches of Sir Steuart Bayley delivered in the Council while moving that the report of the Select Committee be taken into consideration:-[99]

"The object of section 87 (abandonment) is to meet the difficulties which occur when a raiyat apparently abandons his holding, but in such circumstances as to give no assurance whether it is permanently abandoned or not. On the one hand, there is danger to the landlord of an action for dispossession, if he lets the land hastily to a new tenant; on the other hand, there is the danger of temporary absence being taken advantage of by the landlord to effect the dispossession of a raiyat. To meet these two dangers we provide that, if a raiyat abandons his residence without notice and without arranging for his cultivation and payment of rent, the presumption is that he has abandoned his holding. The landlord can then, after filing a notice in the Collector's office, enter on the holding and let it to another tenant. We

---

99. Extract from the Proceedings of the Council of the Governor-General in India dated 27th February, 1885. =Selections, p.444; also the report of the Select Committee dated 12th February 1885, para 38 = Selections, p. 406.

give, however, a term of two years in which the raiyat can sue for re-admission, and the Court may, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of possession, on such terms as to payment of compensation and arrears of rent as it thinks fit.

" We have also added sections directed against collusive surrender or abandonment in fraud of the rights of third parties. The necessity for this was brought to notice in para 69 of the Bengal Government's letter of the 15th September,[1] where it is shown that raiyats not infrequently sub-let the whole or a portion of their holdings in consideration of a large bonus for a term of years. To leave the interests of sub-leases in such cases entirely at the mercy of the sub-lessor in collusion with his landlord would do serious practical harm.....In case of abandonment we have provided section 87(4) that the sub-lease shall only be avoided after the sub-lessee has had the opportunity of taking over, for the unexpired period of his sub-lease, the full rights and liabilities of lessor in regard to the rent of his entire holding."

---

1. Selections, p.380.

The Act neither defined abandonment nor gave an exhaustive description of the facts which constituted it.[2] So it was held that whether there was an abandonment of the holding by the raiyat or not was a question of fact[3] and must depend on the special circumstances of each case. The Act simply provided three conditions as guiding principles for the consideration of the question, namely, that the raiyat (a) voluntarily abandoned his residence without notice to the landlord, (b) did not arrange for payment of his rent as it fell due, and (c) ceased to cultivate his holding either by himself or by some other person.[4] If any of these elements be wanting, there was no abandonment, and the landlord could not re-enter.[5] In the absence of any definition of abandonment in the Act, it was held that all that was necessary to establish it under section 87 was to show that the raiyat ceased to cultivate his holding either by himself or by some other person and made

---

2. Lal v. Arbullah (1896) 1 C.W.N. 198 at 199.
3. Aminaddin v. Chandranath (1928) 48 C.L.J. 390 at 391 = A.I.R. 1929 Cal. 120 at 121; Sarat v. Prasanno (1922) 71 I.C. 304 ; Monohar v. Ananta (1913) 17 C.W.N. 802 at 806.
4. The Bengal Tenancy Act, 1885, sec. 87 (1); Ramesh v. Daiba (1924) 28 C.W.N. 602 at 610.
5. M.Finucane and Ameer Ali, op.cit.,p.388; Monohar v. Ananta (1913) 17 C.W.N. 802 at 806.

no arrangement for payment of his rent.[6] Similarly Finucane and Ameer Ali observed:-[7]

"The cultivation of the land and the payment of rent are two of the common incidents of a raiyati tenancy; and, when a raiyat does neither, and without giving notice to the landlord, departs from the residence he has occupied, that is evidence of his severing his connection so as to justify the landlord in re-entering."

If those two conditions were present, it was not necessary to constitute abandonment that the tenant should leave the village in which the holding was situate.[8] On the other hand the mere fact that the heirs of the original tenant had left the village after the death of their father could not be deemed to have constituted abandonment. Moreover, some time must elapse after their leaving the village before it could be definitely held that they had abandoned the holding.[9] Mere non-payment of rent was not evidence of abandonment but non-payment of rent coupled with non-occupation of land was evidence

---

6. Aminaddin v. Chandranath (1928) 48 C.L.J. 390 = A.I.R. 1929 Cal. 120.
7. M.Finucane and Ameer Ali, op.cit., p.389.
8. Aminaddin v. Chandranath (1928) 48 C.L.J. 390 = A.I.R. 1929 Cal. 120.
9. Aswini v. Harkumar (1928) 32 C.W.N. 1111 at 1112-13.

of an intention to abandon it.[10]

Before a landlord entered upon the land on the ground of abandonment, he was obliged to file a notice in prescribed form in the Collector's office, stating that he had treated the holding as abandoned.[11] Is filing the prescribed notice a condition precedent to the validity of his re-entry? It was held that it was not indispensible.[12] A landlord was entitled to enter upon the land, which was in fact abandoned, without recourse to the provisions of section 87.[13] It was not the notice which terminated the tenancy but the voluntary abandonment by the raiyat, coupled with acts on the part of the landlord (not necessarily limited to the giving of notice), indicating that he considered the tenancy at an end, and it was for the Court in each case to determine whether the tenancy had terminated.[14] The right of the landlord to recover possession of land relinquished by the tenant was

---

10. Goher v. Alifuddin (1919) 30 C.L.J. 13 at 15 = 51 I.C. 356; Obhoya v. Kailash (1887) I.L.R. 14 Cal. 751.
11. The Bengal Tenancy Act, 1885, sec. 87(2).
12. Samujan v. Munshi (1900) 4 C.W.N. 493; Ram v. Jawahir (1907) 12 C.W.N. 899; Priyanath v. Anath (1916) 37 I.C.942.
13. Wahid v. Mahamed (1918) 47 I.C. 147 at 148, following Monohar v. Ananta (1913) 17 C.W.N. 802 at 806.
14. Lal v. Arbullah (1896) 1 C.W.N. 198 at 200.

conferred upon him under the general law and did not depend exclusively upon section 87 of the Act.[15] As that section was not exhaustive, the landlord might proceed by suit, if he could prove that the facts and circumstances of the case led to an inference of abandonment.[16]

A landlord who proceeded to take possession of a holding after service of notice under section 87 of the Act, on the allegation that there was an abandonment by the tenant did so at his own risk. He could not be said to take possession in due course of law, so as to bar a suit by the tenant for recovery of possession under section 9[17] of the Specific Relief Act, 1877.[18] What was the importance of notice then? "The only effect of the service of notice," observed Mookerjee J., "is to make it obligatory upon the tenant to have speedy determination of the question, whether there has been an abandonment or not. If the landlord re-enters without service of

---

15. Golam v. Hanumandas (1934) I.L.R. 61 Cal. 937 at 942; Abdul v. Ali (1930) I.L.R. 58 Cal. 869 at 871; Baikuntha v. Chandra (1929) 33 C.W.N. 1023 at 1027.
16. Matookdhari v. Jugdip (1914) 19 C.W.N. 1319.
17. Infra, p641.
18. Suresh v. Nesa (1910) 11 C.L.J. 433.

notice under sub-section 2, it is open to the tenant to bring a suit for recovery of possession till his rights have been extinguished by the law of limitation."[19] The limitation to bring such a suit varied in cases when the notice was served or when it was not served. If it was served the limitation, under section 87(3) of the Act, was six months in case of non-occupancy raiyat and two years in other cases running from the date of the publication of the notice. But if it was not served, limitation for all classes of raiyats was two years from the date of dispossession by the landlord under article 3 of schedule III of the Bengal Tenancy Act, 1885, as amended by the Acts of 1907 and 1908. In such a suit the Court had to be satisfield that the raiyat had not voluntarily abandoned his holding. The question relating to the character of eviction i.e., whether it was wrongful or not, might incidentally form the subject of enquiry; but the main issue in such a case would be whether the abandonment was voluntary or not.[20] The onus lay on the landlord to prove that

---

19. Ram v. Jawahir (1907) 12 C.W.N. 899 at 901.
20. M.Finucane and Ameer Ali, op.cit.,p.136.

there was an abandonment entitling him to re-enter.[21] If the landlord wanted to assert his right of re-entry on the ground of abandonment, he was obliged specifically to plead the facts constituting it and he could not raise the plea of abandonment for the first time in appeal.[22] Abandonment was largely a question of fact[23] but the inference, from the facts found, as to whether there was an abandonment or not, was a question of law.[24] On being satisfied that the raiyat had not voluntarily abandoned his holding, the Court might order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as the Court might seem just.[25]

The legislature made provisions in sub-section (4) of section 87 of the Act for the protection of the sub-lessees of a raiyat from collusive abandonment.[26] The landlord could not enter upon the land before offering

---

21. Hiralal v. Imanuddi (1932) 36 C.W.N.478 at 479.
22. Harendra v. Khemada (1925) 44 C.L.J. 282.
23. Supra, p. 250.
24. Golam v. Hanumandas (1934) I.L.R. 61 Cal. 937 at 941; Aswini v. Harkumar (1928) 32 C.W.N.1111 at 1112.
25. The Bengal Tenancy Act, 1885, sec. 87(3).
26. The report of the Select Committee dated 12th February 1885, para 38 = Selections p.406; Sir Steuart Bayley's speech dated 27th February, 1885 = Selections, p.444.

to recognise the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the raiyat and on condition of the sub-lessee paying up all arrears due to the landlord from his lessor. The continuance of the sub-lease, therefore, was dependent upon two conditions - (a) that the sub-lessee agreed to pay the rent which the raiyat, who abandoned the holding, had to pay; and (b) that he paid up all arrears due from that raiyat. If the sub-lessee refused or neglected to accept the offer within two months from the date of the offer the landlord could avoid the sub-lessee, enter on the holding and let it to another tenant or cultivate it himself. But he was obliged to enter in accordance with law; even if he thought that the raiyat had abandoned the holding, he had no right to enter upon land in the occupation of sub-lessees, without the assistance of the law.[27] If he so dispossessed them, he committed trespass.[28]

The Amending Act of 1928, inserted special provisions in ~~the~~ sub-section (5) of section 87 whereby an occupancy under-raiyat or an under raiyat, admitted by his landlord to have a permanent

---

27. Jumeer v. Goneye (1869) 12 W.R. 110 at 111.
28. Dumree v. Bissessur (1870) 13 W.R. 291.

and heritable right or an under-raiyat who had been in possession of his land for a continuous period of twelve years or who had a homestead thereon, would succeed to the position of the raiyat who had abandoned his holding. Such an under-raiyat could only step into the raiyat's shoes (a) if he agreed to pay the same rent as he used to pay to the raiyat, (b) if he paid up all the arrears of rent due from the raiyat who had abandoned and (c) if he paid a further sum as salami, equivalent to five times his rent. He had to elect within two months whether he accepted the offer, failing which the landlord could enter upon the land.[29]

Sub-sections (4) and (5) of section 87 of the Act were intended to protect, under certain conditions, an under-raiyat whose immediate landlord had abandoned his holding. But there were important differences between the two sub-sections. Sub-section (4) applied to a sub-lease made by registered instrument;[30] sub-section (5) applied to all sub-leases of the classes mentioned therein. Under sub-section (4) the whole holding had to be offered to the

---

29. The Bengal Tenancy Act, 1885, sec. 87(5).
30. Pran v. Mukta (1913) 18 C.L.J. 193 at 198.

sub-lessee for the remainder of the term, although he might be a sub-lessee of a part only of the holding; but under sub-section (5) the entire holding was to be offered to the sub-lessee only if he was in possession of the entire holding; otherwise the offer was restricted to the part in his possession. Under sub-section (4) the sub-lessee could hold only for the remainder of the term of his sub-lease, but sub-section (5) made no such restriction in point of time. Under sub-section (4) the sub-lessee had to pay the rent payable by the abandoner; this virtually meant that his original rent was reduced but under sub-section (5) the sub-lessee's original rent was continued; over and above he was to pay a salami.

A holding abandoned by a raiyat within the meaning of section 87 did not become the proprietor's private land; it remained part of the raiyati land of the village,[31] in which the right of occupancy might accrue in the ordinary way.

Regarding the distinction between surrender and

---

31. M.Finucane and Ameer Ali, op.cit.,p.396.

abandonment, Chatterjee J., said[32] that "the position of a landlord in a case of abandonment is stronger than that in the case of a surrender by a raiyat. In the case of abandonment, the landlord does not acquire any title through the raiyat as in the case of purchase. In the case of surrender, the raiyat gives up the land to the landlord". According to Woodroffe J., surrender differed from abandonment because the landlord taking the tenant's right should be bound in equity by the tenant's previous transactions such as a mortgage; that is to say, if a tenant could not derogate from his own grant, no more could the landlord who assumed the tenant's right, though he might be entitled to assert his superior right as landlord otherwise than by accepting a surrender from his tenant.[33]

Right to make improvements:- Under the Rent Acts of 1859 and 1869 there was no provision as to raiyat's improvements.

The Bengal Tenancy Act, 1885 provided valuable rights to raiyats in sections 77 and 79. Before the

---

32. Pran v. Mukta (1913) 18 C.L.J. 193 at 198.
33. Mahammad v. Sheikh (1914) 21 C.L.J.185 at 186.

Amending Act of 1928 the former section was confined to the raiyats at fixed rates and occupancy raiyats, the later section to the non-occupancy raiyats. The Amending Act of 1928 widened the scope of the former section so as to include all classes of tenants and repealed section 79. But inadvertently the marginal note of section 77 escaped amendment. We shall discuss section 79 as it stood before the amendment in section 3 of this chapter in connection with the rights of non-occupancy raiyats. Section 77 of the Act as it stood after the amendment of 1928 provided as follows:-

"77. (1) Neither the tenant nor his landlord shall, as such, be entitled to prevent the other from making improvement in respect of the holding, except on the ground that he is willing to make it himself.

(2) If both the tenant and his landlord wish to make the same improvement, the tenant shall have the prior right to make it, unless it affects another holding, or other holdings under the same landlord.

(3) Any fee realised from a tenant for permission to make any improvement in respect of his holding shall be deemed to be an abwab(34) and the provisions of sub-section (1) of section 74 (35) shall apply thereto".

According to that section all classes of raiyats possessed equal rights with the landlord to make improvements in respect of the holdings in their occupation, and

---

34. See p.26 f.n. 39 and infra, pp. 406-430.
35. Infra, p.422.

neither the landlord nor the raiyat could 'as such' restrain the other from making the improvement except on the ground that the landlord was willing to make it himself. But if the raiyat wished to carry out the work, he would have the prior right, unless the improvement was of a general nature and affected another holding or other holdings under the same landlord; in such a case the landlord would have the prior right.[36] The landlord could not take away or limit the right of a raiyat to make improvements on his holding by any contract.[37] If a question arose between the raiyat and his landlord as to the right to make an improvement or as to whether a particular work was an improvement, the Collector might, on the application of either party, decide the question and his decision was final.[38] The landlord could not realise any fee from the raiyat for permission to make any improvement in respect of his holding. If he realised any such fee, it would be deemed

---

36. M.Finucane and Ameer Ali, op.cit., p.364.
37. The Bengal Tenancy Act, 1885, sec.178(1)(d).
38. Ibid, sec.78.

to be an abwab within the meaning of section 74 and he would be liable to the penalties prescribed by sections 74A[39] and 75.[40] Such a fee could not be realised even from the grantee of a permanent mokarari lease.[41]

Sub-section (1) of section 76 of the Bengal Tenancy Act,1885 defined the term 'improvement' to mean "any work which adds to the value of the holding, which is suitable to the holding and consistent with the purpose for which it was let". Sub-section (2) of the same section declared that until the contrary was shown, the following should be presumed to be improvements within the meaning of the section:-

"(a) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture or of drinking or for the use of men and cattle employed in agriculture;

(b) the preparation of land for irrigation;

(c) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-

---

39. Infra, p.424.
40. Infra, p.423.
41. The Bengal Tenancy Act, 1885, sec. 179, Proviso,

land which is culturable;

(d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(e) the renewal or reconstruction of any of the foregoing works; or alterations therein or additions thereto; and

(f) the erection of a dwelling house, whether of masonry bricks, stone or any other material whatsoever, for the tenant and his family, together with all necessary out offices."

But no work executed by the raiyat on his holding was an improvement if it substantially diminished the value of his landlord's property.[42]

The work was not required to be executed on the holding itself. So long as it was executed directly for its benefit, or was, after exeuction, directly beneficial to it, it was an 'improvement'.[43] Thus a water pipe brought to the holding for purposes of irrigation, though not on the holding itself, would be an improvement; a tank made in the vicinity of a holding, not primarily for its benefit, but

---

42. The Bengal Tenancy Act, 1885, sec.76(3).
43. Ibid, sec. 76(1).

used for that purpose after excavation, would equally be an improvement.[44]

An ejected raiyat had the right to get compensation for any improvement effected by him.[45] The Act also gave him the further right in respect of crops and land prepared for sowing.[46] We shall discuss those rights in chapter 8, section 4.

It may be observed that the main object of the Permanent Settlement of 1793 was the improvement of agriculture. Lord Cornwallis tells us that one third of the Company's territory in India was then a jungle inhabited only by wild animals. He maintained that a short settlement would not induce any proprietor to clear the jungle or encourage raiyats to come and cultivate his lands. He then went on to say that "it is for the interest of the state that the landed property should fall into the hands of the frugal and thrifty class of people, who will improve their lands and protect the ryots, and thereby promote the general prosperity of the country".[47] With that purpose in view it was provided in Regulation 2 of 1793:-

---

44. M.Finucane and Ameer Ali, op.cit., p.362.
45. The Bengal Tenancy Act, sec.82(1).
46. Ibid., sec.156.
47. The Governor General's Minute dated 18th September, 1789.

"Experience having evinced that adequate supplies of grain are not obtainable from abroad in seasons of scarcity, the country must necessarily continue subject to these calamities until the proprietors of the lands shall have the means of increasing the number of the reservoirs, embankments and other artificial works, by which, to a great degree, the untimely cessation of the periodical rains may be provided against and the lands protected from inundation.....To effect these improvements in agriculture, which must necessarily be followed by the increase of every article of produce, has, accordingly, been one of the primary objects, to which the attention of the British Administration has been directed in its arrangements for the internal Government of these provinces (Bengal and Behar). As being the two fundamental measures essential to attainment of it, the property in the soil has been declared to be vested in the landowners, and the revenue payable to Government from each estate has been fixed for ever. These measures have at once rendered it the interest of the proprietors to improve their estates, and given them the means of raising the funds necessary for that purpose."
Similarly in the Proclamation of the Permanent Settlement of 1793 it was declared:-[48]

48. The Bengal Permanent Settlement Regulation 1 of 1793, sec.7(6).

"The Governor General in Council trusts, that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, will exert themselves in the cultivation of their lands under the certainty that they will enjoy exclusively the fruits of their own good management and industry."

But the zemindars scarcely paid any heed to the policy of investing money in the improvement of the land. On the other hand most of them were absentee landlords;[49] they left the villages and settled in the metropolis. In this regard Mill observed[50] that "the new landed aristocracy disappointed every expectation built upon them. They did nothing for the improvement of their estates, but everything for their own ruin". It was the raiyats who cleared the jungles, made the land fertile and habitable. In the language of the Land Revenue Commission, Bengal - "It can not be denied that the extension of cultivation since the Permanent Settlement has with few exceptions been the work of the actual cultivators rather than of the

---

49. The report of the Land Revenue Commission, Bengal, dated 21st March, 1940, vol.I,para 83.
50. J.S.Mill, Principles of Political Economy (London: Parker, Son and Bourn, West Strand,1862, 5th Ed.), vol.I,p.396.

zemindars as a class."[51] Ultimately the legislature, having watched the inactivity of the zemindars in this respect for about a century, wisely accorded the important right to improve the land to the raiyats under the Bengal Tenancy Act, 1885.

Right to sub-divide holdings: - The Rent Acts of 1859 and 1869 contained no provisions for sub-division of raiyats' holdings. Accordingly it was held[52] that the existence of a custom in a particular district, by which the rights of occupancy were transferable, would not justify a sub-division of a holding, and where the tenant sub-divided and transferred the different parts to different persons, the landlord was entitled to re-enter. But the zemindar might recognise the division of a holding either formally by actually dividing it into parts or impliedly by receiving rents from the parts of the holding separately.[53]

Section 88 of the original Bengal Tenancy Act, 1885 provided that "a division of a tenure or holding,

---

51. Para 82 of the report dated 21st March, 1940, vol.1.
52. Trithanund v. Mutty (1878) I.L.R. 3 Cal. 774.
53. Ooma v. Rajluckhee (1875) 25 W.R.19.

or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his consent in writing." Under that section the consent of the landlord in writing was necessary to make the sub-division of the holding binding on him. But where it was clear from his conduct or that of his authorised agent that the division of the holding was acquiesced in, or consented to, the law did not require the consent to be formulated in writing in terms. The consent was to be gathered from all the circumstances .[54] Thus it was held in a Full Bench decision[55] that, where a receipt for rent, granted by the landlord or by his agent, contained a recital that a tenant's name was registered in the landlord's sheristha as a tenant of a portion of the original holding at a rent which was a portion of original rent, it amounted to a consent in writing by the landlord to a division of the holding and a distribution of the rent payable in respect thereof within the meaning of section 88 of the Act. In the case referred to Maclean C.J., further observed that, if the receipt

---

54. M.Finucane and Ameer Ali, op.cit.,p.398.
55. Pyari v. Gopal (1898) I.L.R. 25 Cal. 531 F.B.

was granted by an agent, it pre-supposed that he was duly authorised by the landlord to give such a receipt.[56] To remove doubts raised by this ruling the section was amended by the Western Bengal Tenancy (Amendment) Act, 1907. In this regard the Select Committee to which the Bill of 1906 was referred to observed:-[57]

"Unless their agents are expressly authorised in that behalf, it would be unfair to the landlords and detrimental to their interest to enact that recognition of the division or sub-division of a holding, and acceptance of a proportionate share of rent by their agent is binding upon the landlord. A wide door would be opened to fraud, and it would be easy for tenants to secure recognition by bribes to the agent. We have, therefore, provided that there must be an express authorization for the exercise of this power by the agent."

The necessity of the amendment of section 88 was also stated in the notes on clauses of the Bill as follows:-[58]

---

56. Ibid., p.536.
57. Para 20 of the report dated 6th March 1907 = The Calcutta Gazette dated March 9, 1907, part IV, p.7.
58. Clause 16 of the notes on clauses = The Calcutta Gazette, October 24, 1906, part IV, p.15 and November 14, 1906, part IV, p.34.

"The ruling reported in I.L.R. 25 Cal. 531, has given rise to doubts as to the circumstances, in which the consent to the division of a tenure or holding, or distribution of the rent payable in respect thereof, may be inferred from the conduct of the landlord. The amendment will make it clear that the landlord is only bound by an express consent in writing given by himself or a duly authorised agent. The ordinary practice, however, is for the landlord to signify his consent to the division of a tenure or holding and distribution of the rent payable, by making the necessary alteration in his rent-roll, and it is accordingly provided that where such an alteration has been made, it may be presumed that the landlord has given his express consent to the division."

Accordingly section 88 was amended by the Western Bengal Tenancy (Amendment) Act, 1907 in the following terms:-

"88. A division of a tenure or holding, or distribution of the rent payable in respect thereof, shall not be binding on the landlord, unless it is made with his express consent in writing or with that of his agent duly authorised in that behalf:

Provided that, if there is proved to have been made in any landlord's rent-roll, any entry showing that any tenure or holding has been divided or that the rent payable in respect thereof has been distributed, such landlord may be presumed to have given his express consent in writing to such division or distribution."

According to the amendment of 1907 the landlord was bound to recognise the division of the holding and the distribution of the rent only when an express consent in writing was given by himself or by his duly authorised agent. But it was not always easy for the tenant to prove such express consent on the part of the landlord. So the legislature laid down in the proviso that an entry in the landlord's rent-roll showing a division of the tenancy or a distribution of the rent, should be prima facie evidence of the express consent.[59]

But the Eastern Bengal and Assam Legislative Council took no steps to make similar amendments in the law in force in Eastern Bengal; section 88 in its original form remained in force in that province. The reason was stated by the Select Committee of the Eastern Bengal and Assam Tenancy (Amendment) Bill of 1907 as follows:-[60]

"Much more than is the case in Bengal the zemindars of this province are non-resident and leave the

---

59. Rajani v. Hara Sundari (1917) 22 C.W.N. 693 at 694.
60. Para 7 of the report dated 9th March 1908 = The Eastern Bengal and Assam Gazette dated 8th April 1908, part V, p.3.

management of their estates wholly in the hands of their local agents. Moreover the bulk of the tenants are Mahomedans, whose law of inheritance tends to promote the division of tenancies. It has been strongly pressed upon us that the inevitable result of the proposed amendment of the law will be to cause grave and wide spread injustice. The tenant deals with the local agent. He has been accustomed to regard him as fully empowered in all particulars. He has no opportunity of procuring inspection of the agent's power of attorney and if he did see it, would probably not understand its contents. There are unscrupulous landlords as well as unscrupulous tenants and dishonest agents. No landlord will in fact give his local agent the required authority, and in practice the tenant will not be able to secure inspection or production of the rent-roll, and even where it may be produced and the necessary entry discovered, the landlord will not find it difficult to rebut the presumption. Thus the proviso will not be of practical value. If the proposed clause be passed into law, a tenant who hereafter secures recognition of a division by payment in good faith to the agent of the customary salami may years later find that his money

is confiscated and that his fields are to be sold for the arrears of some thriftless defaulter. It has not been shown to us that, in any case where fraudulent collusion between tenant and agent existed, any Court has held that the agent's receipt is nevertheless to be taken as the landlord's consent, and we are of opinion that in general, the landlord can readily protect himself by entertaining more highly paid and therefore more reliable agents, by the exercise of stricter supervision over his employees and by making it widely known by printed endorsements on rent receipt forms and otherwise that his local agents are not authorised to open separate accounts."

Section 88 was again amended by the Bengal Tenancy (Amendment) Act, 1928. By that amendment, section 88 in the form given to it in Western Bengal was adopted[61] in the reunited province with a second proviso which declared that, for a valid division of a holding or distribution of rent thereof, the consent of all co-sharer landlords and all co-sharer tenants would be necessary; courts were empowered, on being moved by a tenant from whom such consent was withheld or who was aggrieved by a division or distribution, to make

---

61. Notes on clause 58 of the Bill of 1928 = The Calcutta Gazette dated July 12, 1928, Part IV,p.100.

proper orders, subject to the restriction that the division should not result in the creation of unnecessarily small holdings and the distribution of rent should not bring the rent to less than rupees two and eight annas in case of raiyat's holding. The proviso also laid down the procedure to be adopted in such proceedings. The object of this amendment of 1928 was explained by the mover as follows:-[62]

"When you have given a statutory recognition to the transfer of a portion of a holding, it is only fair and equitable that a sub-division of the tenancy as also a sub-division of the rent should be allowed...."

Finally the Amending Act of 1938 substituted a new section for the section 88 already discussed. Sub-section (1) of the new section provided that "save as provided elsewhere in this section, a division of a tenure or holding or a distribution of the rent payable in respect thereof shall not be valid, unless such division or distribution has been expressly consented to in writing by both (a) the landlord or the entire body of landlords or their agents duly authorised in that behalf and (b) all the co-sharer tenants;

---

62. Bengal Legislative Council Proceedings, 1928, Vol.XXX, No.2, pp.843-44.

Provided that, if there is proved to have been made in any landlord's rent-roll any entry showing that any tenure or holding has been divided or that the rent payable in respect thereof has been distributed, such landlord may be presumed to have given his express consent in writing to such division or distribution." The other sub-sections dealt with the procedure to be followed by the Court in disposing of applications for sub-division of holdings and distribution of rent. No momentous change was introduced by the Amending Act of 1938. It gave increased facilities for the sub-division of the holdings into smaller units than before and made more clear and precise the procedure for effecting division through the Court.

According to section 88 a raiyat could divide his holding or distribute the rent payable in respect thereof by mutual consent of the parties[63] or through the Court.[64] Sub-section (1) of that section required the consent of the parties to be express, and did not include a consent implied from a document produced.[65] A division of a holding between the raiyats might be binding on them inter se, though it did

---

63. The Bengal Tenancy Act, 1885, sec.88(1).
64. Ibid, sec.88(2).
65. Rajani v. Harasundari (1917) 22 C.W.N. 693.

not bind the landlords, unless they gave their express consent to such division.[66] Similarly a division of a holding without the consent of all the co-sharer raiyats was invalid, even if the kabuliat, by which the division was effected, included new lands.[67] Again the consent required in sub-section (1) of section 88 had to be in writing; it could not be proved except by the writing or document itself. In Jnanendra v. Gopal,[68] the learned judges observed:-

"The consent in writing by the landlord to the division of a tenure has the effect of substituting a new contract for the old. It should, therefore, be complete in itself and embody distinctly the terms of the new contract. Should it fail to do so, the principle laid down in section 91 of the Evidence Act would apply and extraneous evidence to prove the terms of the contract would be inadmissible". The express consent of the landlord in writing might be presumed from an entry in the rent-roll showing a division of the holding or a distribution of the rent payable in respect thereof.[69]

When a division of the holding or distribution of

---

66. The Bengal Tenancy Act, 1885, sec.88(1) as amended by the Act of 1938.
67. Mahendra v. Rajani, A.I.R. 1939, Cal.609.
68. (1904) I.L.R. 31 Cal. 1026 at 1034.
69. The Bengal Tenancy Act, 1885, sec.88(1), Proviso.

rent could not be amicably effected by mutual agreement among the parties, one or more co-sharer raiyats might, under sub-section (2), file an application (accompanied by the prescribed fee for service of notice upon the landlord or landlords or their common agent as the case might be and also on the remaining co-sharer raiyat) to the Court, asking for division of the holding or for a distribution of the rent payable in respect thereof or for annulment or modification of a previous division or distribution, provided such previous division or distribution was not effected by means of a judicial proceeding under this sub-section or by mutual agreement of all the parties concerned under sub-section (1). A Civil Court could not re-open or annul or modify a previous division or distribution, if the same was effected by means of a judicial proceeding under sub-section (2) or by mutual agreement between the landlords and co-sharer raiyats in conformity with sub-section (1). This, however,did not mean that a fractional unit of a holding, previously created, could not be further broken up by means of a judicial proceeding under sub-section (2). Such a unit already created became an independent holding; further splitting up of the

same might be made till the ultimate limit of rent to the extent of one rupee as provided in sub-section 2(b) was reached.

When an application was filed to the Court by one or more co-sharer raiyats, joining the landlord or landlords and the remaining co-sharer raiyats, any co-sharers might join with the applicant. It was the duty of the Court, on such an application from any co-sharers, to transfer his name from the category of the opposite party to that of the applicant and join him as a co-applicant. No further notice on the landlord or landlords and the remaining co-sharers had to be served upon such joinder.[70] When the division of a holding or distribution of rent was ordered by the Court, each applicant, including the co-applicants,had to pay a fixed mutation fee of one rupee to the landlord, irrespective of the value of the sub-divided holding.[71] If a raiyat was aggrieved by an order of the Court directing the sub-division of a holding or distribution of rent payable in respect thereof, he might file an appeal within 30 days from the date of the order, on paying

---

70. Ibid, sec.88(3).
71. Ibid, sec.88(4).

the prescribed fee. But there was no second appeal from an order passed by the Appellate Court.[72]

The effect of a valid sub-division of a holding was that separate holdings were created. Therefore the landlord could no longer bring a suit for the rent due from the original holding. If he brought such a suit or obtained a decree, a sale of the holding in execution thereof could not operate as a rent sale and the auction purchaser could not annul incumbrances created by a raiyat. Secondly, from the date from which the division of a holding or distribution of rent took effect, the liability of such co-sharer raiyat for rent ceased to be joint and several, and the liability became several only.[73]

Sec. 3. Rights of non-occupancy raiyats.

The Bengal Tenancy Act, 1885 defined but few incidents of the holding of a non-occupancy raiyat. As a result question frequently arose which could not be answered from the text of the Act; lawyers and judges were obliged to have recourse to well-known customs or local usages or customary laws and rules of equity and good conscience. Section

---

72. Ibid, sec.88(6).
73. Ibid, sec.88(5).

183 of the Act saved the operation of "any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by its provisions". The rules of law prevalent in other countries, especially when they were adopted in cognate Acts by the Indian Legislature and earlier decisions of the Superior Courts, very often supplied omissions in codified laws.[74]

The question whether the interest of a non-occupancy raiyat was heritable or not had been the subject of conflicting judicial decisions. In Karim v. Sundar,[75] it was held that the right of a non-occupancy raiyat, who did not hold under any express engagement, was not heritable. In delivering the judgment of the Court Banerjee J., observed:-[76]

"The absence of any provision relating to non-occupancy holdings similar to that embodied in section 26[77] of the Act with reference to the right of occupancy, affords in our opinion the strongest indication that the legislature did not intend to make non-occupancy holdings heritable. Under the law as it stood before the Bengal Tenancy Act was passed,

---

74. S.C.Mitra, op.cit.,pp.343-44.
75. (1896) I.L.R.24 Cal. 207.
76. Ibid,p.209.
77 Supra,p.202.

non-occupancy raiyats not holding under express agreements were treated as tenants-at-will or as tenants from year to year.[78] Under the old law non-occupancy raiyats were the lowest class of raiyats and if the respondent's contention be correct, it would follow that all raiyati holdings were heritable. But this would be somewhat inconsistent with certain provisions of law, such as Regulation VIII of 1819, section 11, clause 3, which speak of hereditary raiyats as a distinct class."

Mitra J., in his Tagore Law Lectures of 1895 expressed the view that the interest of a non-occupancy raiyat was heritable.[79] In Lakhan v. Jainath,[80] Mitra and Holmwood J.J., referred to the Full Bench the question - "Is the right of a non-occupancy raiyat heritable?" The Full Bench decided no more than that such an interest had not been made heritable by the Bengal Tenancy Act, 1885. In delivering the judgment of the Court Maclean C.J. observed:-[81]

"Upon the question whether that Act (Bengal Tenancy

---

78. The Bengal Rent Act, 1859, sec.25; C.D.Field, Bengal Code, para 38; Thakooranee v. Bisheshur (1865) B.L.R. Sup.Vol. 202 at 220, F.B.
79. S.C.Mitra, op.cit.p.344.
80. (1907) I.L.R. 34 Cal. 516 F.B.
81. Ibid,p.521.

Act, 1885) created the right if it did not previously exist, I do not see how we can avoid the strong inference to be drawn from section 26 of the Act. The legislature by that section has expressly enacted that, 'if a raiyat dies intestate in respect of right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immovable property'; but it says nothing about the right of a non-occupancy raiyat. On the principle of expressio unius est exclusis alterius the inference is strong that the legislature did not intend by that Act to make the right of a non-occupancy raiyat heritable; but if such right were heritable at the time of the passing of the Bengal Tenancy Act, it has not in my judgment, been taken away by the Act. In my opinion the Act neither created, nor destroyed any such right. I, therefore, can only answer the question by saying that, if the right existed before the Bengal Tenancy Act, it has not been destroyed by that Act, and if did not so exist, it has not been created by the Act."

The matter came up again for decision before a Division Bench in Uday v. Hari,[82] in which Jenkins C.J.

---

82. (1909) 13 C.W.N. 937 at 941.

expressed himself in the following terms:-

"The state of authorities on that point can not be regarded as satisfactory; for while on the one hand there is the decision of a Division Bench of this Court in Karim v. Sundar[83] to the effect that it is not heritable, on the other hand in Lakhan v. Jainath[84] the point, though apparently referred, was left undecided, inasmuch as two members of the Full Bench were of opinion that the holding was heritable, one was of opinion that it was not, and two other members did not express any opinion, except so far as the Bengal Tenancy Act was concerned."

The learned Chief Justice then said that the Court would have been glad to refer the point to a Full Bench, had the suit not been bound to fail on the ground that "the title by heirship was not made out."

The opportunity of referring the question to another Full Bench however came in 1914 to Mookerjee and Beachcroft J.J., who had before them the case of Midnapore Zemindary v. Hrishikesh.[85] The question referred by them was broadly -

---

83. (1896) I.L.R. 24 Cal. 207.
84. (1907) I.L.R. 34 Cal. 516 F.B.
85. (1914) I.L.R. 41 Cal.1108 F.B., followed by Patna High Court in Kalru v. Janki (1916) 1 P.L.J.273.

whether the right of a non-occupancy raiyat was heritable. The answer given by the Full Bench was that, apart from possible exceptions, the holding of a non-occupancy raiyat was heritable. The judgment did not indicate what the possible exceptions might be; but they were probably those arising out of custom or contract.

It may be observed that, after the Full Bench decision in Midnapore Zemindary v. Hrishikesh,[86] the Bengal Tenancy Act, 1885 was subjected to several amendments and as none of these purported to reverse or modify the law laid down in that case, it must be presumed that the legislature accepted this judicial interpretation of the statute.[87]

A non-occupancy holding could not be transferred or bequeathed except when this was allowed by custom.[88] In this respect the position of a non-occupancy raiyat was similar to that of an occupancy raiyat prior to the Bengal Tenancy (Amendment) Act, 1928.

We have already observed[89] that a non-occupancy raiyat

---

86. (1914) I.L.R.41 Cal.1108 F.B.
87. Nogendra v. Pyari (1915) 21 C.L.J. 605 at 608; Kayastha v. Sita Ram, A.I.R. 1929 All. 625 F.B.
88. The Bengal Tenancy Act, 1885, sec.183; S.C.Mitra, op.cit.,p.344.
89. Supra, p.224.

had the same right as an occupancy raiyat to sub-let his land. There was nothing in the Act which prevented a non-occupancy raiyat from sub-letting. On this point Woodroffe J., said:-[90]

"A non-occupancy raiyat is not prohibited from sub-letting and may have an under-raiyat under him and may create a protected interest under section 160, clause (g),[91] if his landlord allows him so to do. An incumbrance may be created by a non-occupancy raiyat on his holding in limitation of his own interest, however limited, by way of sub-lease."

Though a non-occupancy raiyat stood on the same footing as an occupancy raiyat in respect of sub-letting, the right of an occupancy raiyat to sub-let could not be taken away by contract by reason of section 178(3)(e),[92] but there was

---

90. Ram v. Bhela (1910) I.L.R. 37 Cal. 709 at 713-14.
91. This clause provided that "any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create."
92. This clause provided that "nothing in any contract made between a landlord and a tenant after the passing of this Act shall take away the right of an occupancy raiyat to sub-let subject to and in accordance with the provisions of this Act." This clause was renumbered as Clause (d) by section 112(b)(ii) of the Bengal Tenancy (Amendment) Act, 1928.

no such provision for the benefit of a non-occupancy raiyat.

We have already observed that a non-occupancy raiyat had the right to surrender[93] and abandon[94] his holding.

Before the Bengal Tenancy (Amendment) Act, 1928 a non-occupancy raiyat had a limited right to make improvements of his holding under section 79 of the Act which ran as follows:-

"79.(1) A non-occupancy raiyat shall be entitled to construct, maintain and repair a well for the irrigation of his holding, with all works incidental thereto, and to erect a suitable dwelling house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission.

(2) A non-occupancy raiyat who would, but for the want of his landlord's permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord a request in writing calling upon him to make the improvement within a reasonable time; and, if the landlord is unable or neglects to comply with that request, may make the improvement himself."

Referring to that section the Select Committee to which the Bill of 1884 was referred to said:-[95]

---

93. Supra, p.233.
94. Supra, p.245.
95. The report of the Select Committee dated 12th February 1885, para 35 = Selections, p.406.

"We have in section 79 provided that a non-occupancy raiyat shall be entitled to construct a well for the irrigation of his holding. A well constructed under this provision will be an improvement within the meaning of the Act, and the raiyat will, on being ejected, be entitled to receive compensation for it. The high importance of facilitating and encouraging the construction of all works of irrigation in this country with a view to the prevention of famine points to the necessity of this."

We have already noted[96] that section 79 was repealed by the Amending Act of 1928 and by the same amendment a non-occupancy raiyat was given the benefit of sections 76 and 77 of the Act along with other classes of raiyats to make improvements in his holding. We have discussed in the same place the right of a non-occupancy raiyat to make improvements after 1928. In case of ejectment he was given the right to claim compensation for improvement which we shall discuss in chapter 8, section 4.

---

96. Supra, p.260.

Sec. 4. Restriction of the raiyats' contractual rights.

From our discussion of the rights of a raiyat, it is clear that his rights were originally based on occupation and regulated by custom. They were not based on contract; the idea of rights regulated by contract was unfamiliar to him.[97] In the language of Sir C.P.Ilbert - "He simply occupies the land, as his forefathers have occupied it before him, subject to the observance of certain conditions, the general character of which is approximately known and understood, though they have never been reduced to a definite written form."[98]

But under the provisions[99] of the Bengal Leases and Land Revenue Regulation XVIII of 1812 the zemindars were allowed to enter into contracts freely with their raiyats on any term which they might deem conducive to their interest. In this regard Trevor J., in the Full Bench case[1] observed:-

---

97. Sir C.P.Ilbert's speech in the Legislative Council of the Governor-General of India dated 11th March 1885 = Selections, p.599.
98. Ibid,
99. Sec.2 = J.H.Harington, Analysis, vol.III,p.476.
1. Thakooranee v. Bisheshur (1865) B.L.R. Sup.vol.202 at 217 F.B.

"The khudkasht ryots, though they were entitled to pottas at the pergunna rates by the laws of 1793 and and following years, and though under section 6 of Regulation 4 of 1793 the Courts were, in cases of disputes, to determine the rate of potta according to those rates, still, under the operation of the laws cited above, ryots might, if they pleased, bind themselves by specific engagements irrespective of those rates; and, of course, having done so voluntarily, they would be held strictly to the terms of their engagements."

Similarly, in the same case Campbell J., observed:-[2]

"We are all again agreed that if, in a possible case, written contract inconsistent with the customary rates, and a holding under that contract, be proved, effect must be given to the contract, except so far as it is varied by the strictest interpretation of the provisions of Act X of 1859".

The Bengal Rent Act, 1859, referred to by Campbell J., laid down in section 7 that "nothing in the last preceding section shall be held to affect the terms of any written contract for the cultivation of land entered into

---

2. Ibid.,p.269.

between a landholder and a ryot, when it contains any express stipulation contrary thereto".

The Bengal raiyats were ignorant, poor, apprehensive of oppression; there was no one to whom they would turn for independent advice. The zemindars took full advantage of the situation. So it was absolutely necessary to restrict the contractual rights of a raiyat so that he could not enter into any contracts with his landlord surrendering the rights allowed by law. In this regard the Government of India in a despatch to the Secretary of State wrote as follows:-[3]

"Such is the power of the zemindars; so numerous and effective are the means possessed by most of them for inducing the raiyats to accept agreements, which, if history, custom, and expediency be regarded, are wrongful and contrary to good policy; that to uphold contracts in contravention of the main purpose of the Bill would be, in our belief, to condemn it to defeat and failure. It is absolutely necessary that such contracts should be disallowed; and in this conclusion we have the support, not only of the Bengal Government, but also of the almost

---

3. Despatch to the Secretary of State, No.6 dated 21st March, 1882, para 85 = Selections, p.25.

unanimous opinions of the Bengal officers."

The Bengal Government in their report[4] showed that "the provisions on the subject contained in the Bill are in harmony with the principles of the Permanent Settlement Regulation VIII,1793, which, in sections 57 and 58 subjected to the Collector's supervision and approval not only the forms of leases, but also the rates of rent recoverable under them." They in their subsequent report[5] said that "the checks which the Bill imposes will be found no oppressive bond by fair dealing zemindars." When the subject matter was under discussion Sir C.P.Ilbert pointed out the inequality of the positions of the landlord and the raiyat while executing a kabuliat in the following terms:-[6]

"But there are certain rights which we know very well that the raiyat would not give up except under pressure of absolute necessity - rights which are essential to his status; and if we found that he has attached his signature

---

4. Report dated 27th September,1883, para 11 = Selections, p.223.
5. Report dated 15th September 1884, para 78 = Selections, p.387.
6. Sir C.P.Ilbert's speech dated 11th March 1885 = Selections, p.600.

or mark to a kabuliat, purporting to give away these rights, we may feel morally certain that the signature has been obtained under circumstances which are described in the Indian Contract Act as constituting undue influence. In fact, whilst the elements of an ordinary legal contract are offered on the one hand and acceptance on another, the characteristic elements of the transaction which results in the execution of such kabuliats as these are pressure on the one side and submission on the other. It is the execution of [illegible] instruments of this nature that we wish to prevent. We desire to prevent the occupancy raiyat from contracting or appearing to contract himself out of rights which are essential to his status".

Accordingly the legislature in section 178 of the Act of 1885 wisely took away from the raiyat the so-called freedom of contract which he so long enjoyed to his detriment; the Act prevented him from contracting out of the rights which were essential to his status. That section declared as follows:-

"178. (1) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act -

(a) shall bar in perpetuity the acquisition of an occupancy right in land, or

(b) shall take away an occupancy right in existence at the date of the Contract, or

(c) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or

(d) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them, [or

(e) shall entitle a landlord to recover as rent, from a tenant whose rent is a share, as opposed to a fixed quantity of produce, produce in excess of half the gross produce of the holding for the year for which the rent is claimed, or

(f) shall take away or limit the rights of an under-raiyat as against his immediate landlord, as set forth in chapter VII, or

(g) shall take away or limit the right of an occupancy raiyat to transfer his holding or any share or portion thereof in accordance with the provisions of section 26B to 26G, or

(h) shall take away or limit the rights of occupancy raiyats in trees on their holdings, as provided in section 23A, or

(i) shall affect the provisions of section 67 relating to interest payable on arrears of rent]. [7]

"(2) Nothing in any contract made between a landlord and a tenant since the 15th day of July,1880, and before the passing of this Act, shall prevent a raiyat from acquiring in accordance with this Act, an occupancy right in land.

---

7. The clauses within brackets i.e., (e), (f), (g), (h), and (i) were inserted by section 112(a) of the Bengal Tenancy (Amendment) Act, 1928.

"(3) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall -

(a) prevent a raiyat from acquiring, in accordance with this Act, an occupancy right in land;

(b) take away or limit the right of an occupancy raiyat to use land as provided by section 23;

(c) take away the right of a raiyat (or under-raiyat)[8] to surrender his holding in accordance with section 86;
. . . . . .[9]

(d)[10] take away the right of an occupancy raiyat to sub-let subject to, and in accordance with, the provisions of this Act;

(e) take away the right of a raiyat to apply for a reduction of rent under section 38 or section 52".

The restrictions on contract in section 178 may be divided into three classes:-[11] the first referred to all contracts past and future; the second, to contracts between

---

8. The words within bracket were inserted by section 34 (2) of the Bengal Tenancy (Amendment) Act, 1938.
9. The former clauses (d), (g) and (h) were omitted by section 112(b)(i) of the Amending Act of 1928. The former clauses provided as follows:-
   "(d) take away the right of a raiyat to transfer or bequeath his holding in accordance with local usage;
   "(g) take away the right of a landlord or a tenant to apply for a commutation of rent under section 40;
   "(h) affect the provisions of section 67 relating to interest payable on arrears of rent."
10. Clauses (e) and (f) were renumbered as clauses (d) and (e), respectively by section 112 (b)(ii) of the Amending Act of 1928.
11. Sir Steuart Bayley's speech in the Legislative Council of the Governor General in India dated 27th February,1885 = Selections, p.449.

15th July 1880 (the date of publication of the report of the Rent Law Commission) and 14th March 1885 (the date of passing of the Bengal Tenancy Act), prohibiting the acquisition of occupancy rights; the third to contracts, made after the passing of the Act, barring the acquisition of the right of occupancy or interfering with certain rights enjoyable by the raiyats.

Leases relating to waste land were, however, exempted from those restrictions. When a lease was granted bona fide for the reclamation of waste land, the accrual of the occupancy right could be barred till the expiry of the term of the lease. But nothing in the lease should operate so as to destroy an occupancy right which grew during the lease.[12] And where a landlord reclaimed waste lands by his own servants or hired labourers and subsequently let it, the raiyat would acquire no occupancy right in it for the first thirty years of such lease, if a stipulation to that effect was made in the contract.[13] Those exceptions were meant to encourage reclamation by landlords.[14] The accrual of

---

12. The Bengal Tenancy Act, 1885, sec.178,proviso (i).
13. Ibid,proviso (ii).
14. Mr.W.W.Hunter's speech in the Legislative Council dated 11th March,1885 = Selections,p.600.

the occupancy right might also be barred in orchard or horticultural land temporarily let out for cultivation with agricultural crops.[15] The exception was extended to the horticultural land by the Amending Acts of 1907 and 1908. If a tenant was given a temporary lease of such lands, he should not be allowed to retain them after the expiry of the lease, on the plea that occupancy rights accrued.[16]

By the Amending Act of 1928, the legislature imposed a beneficial limitation on the right of an occupancy raiyat to transfer his land by mortgage. Section 26G(1) of the Act provided that "an occupancy raiyat may enter into a complete usufructuary mortgage in respect of his holding or of a portion or share thereof for any period which does not and can not, in any possible event, by any agreement, express or implied, exceed fifteen years." The object of that provision was thus explained by Mr.F.A.Sachse

---

15. The Bengal Tenancy Act, 1885, sec.178, proviso (iii).
16. Notes on clause 38 of the Bill of 1906 = The Calcutta Gazette dated October 24, 1906, part IV,p.19, also dated November 14, 1906, part IV, p.38; Notes on clause 56 of the Bill of 1907 = The Eastern Bengal and Assam Gazette dated November 13, 1907, part V, p.58.

on the floor of the House:-[17]

"The provision about complete usufructuary mortgages is entirely for the benefit of the bona fide cultivator. How often does a raiyat not give up possession of one or more plots of his land in return for a petty loan? At the end of 5 years or 10 years the capital is still unpaid and the raiyat has to see his land go out of his possession for ever. It would be far better if he sold a small area right away instead of mortgaging a larger area for a long period and then seeing it sold away. If this provision is accepted, no mahajan[18] can keep a raiyat out of his land for more than 15 years at the most. At the end of that period he must give it back as the whole capital and also the interest will have been paid off."

The Amendment of 1938 carried the idea further by providing that "no other form of usufructuary mortgage so entered into after the commencement of the Bengal Tenancy (Amendment) Act,1928, shall have any force or effect."[19] In terms of that amendment the creation of any form of usufructuary

---

17. Bengal Legislative Council Proceedings, 1928,vol.XXX, No.2, p.743.
18. 'mahajan' = money lender.
19. The Bengal Tenancy Act, 1885, sec. 26G(1) as amended by the Act of 1938.

mortgage for a period exceeding 15 years was void ab initio. The Amendment Act of 1940 further declared that "no mortgage (other than a complete usufructuary mortgage) entered into by an occupancy raiyat in respect of his holding or of a portion or share thereof after the commencement of the Bengal Tenancy (Amendment) Act, 1940, in which possession of land is delivered to the mortgagee, shall have any force or effect."[20] In other words an occupancy raiyat could not, after the commencement of the Act of 1940, create any possessory mortgage other than a complete usufructuary mortgage.

It may be observed that the main object of putting restriction upon the raiyats' contractual rights was to safeguard their interests[21] and to protect them from improvident acts depriving themselves of the benefits conferred by the various provisions of the Bengal Tenancy Act, 1885. It was an exercise of parental care, which, in effect, treated the raiyats as permanent minors, incapable of escape from the fetters imposed by law on their power of contract but those restrictions saved the whole agricultural community of Bengal from falling into the total clutches of the landlords and the mahajans.

---

20. Ibid, sec.26C(1)(b).
21. Kasem v. Tarakeswar, A.I.R. 1925 Cal. 1065 at 1066.

CHAPTER 4

Raiyats' liability for rent

Sec.1. Definition of rent.

According to Ricardo and other Political Economists "rent is what land yields in excess of the ordinary profits of stock".[1] In the words of Mill - "this is the theory of rent, first propounded at the end of the last century (eighteenth century) by Dr.Anderson, and which, neglected at the time, was almost simultaneously rediscovered, twenty years later, by Sir Edward West, Mr.Malthus and Mr.Ricardo".[2]

Let us now look at the customs of and condition in India under which the raiyats were paying rent and consider whether this theory of rent is applicable to them. Under the preceding Hindu and Muslim Governments they were paying a fixed proportion of the produce of their holdings as revenue or tax, in consideration of the protection afforded by the ruling power to their persons and property.[3] In this regard the Rent Law

---

1. The report of the Rent Law Commission, 1880, para 38.
2. J.S.Mill, op.cit.,p.509.
3. Civilian,op.cit.,pp.2,4,8,21; C.D.Field, Bengal Code, para 61; A.Phillips, op.cit.,p.5.

Commission, 1880 observed:-

"According to ancient and established usage the dues of Government from land in India have from time immemorial consisted of a certain portion of the annual produce of every bigha. Such was the rule in the time of the old Hindu Rajas, when Government in all or most cases collected these dues direct from the cultivators. The Muslim Government retained this rule with some modifications of detail in carrying it into effect....once land was cleared and brought completely under cultivation, this proportion of the produce was taken in every case. The ryot cultivated for subsistence, not with any immediate view to profit. Whether more land should be taken into cultivation depended, not upon whether profits had risen, but upon whether the land already in cultivation was sufficient to raise food for the people. The State demand in no way depended upon profits, and was in no way regulated by any calculation of the total value of the produce and the cost of producing it. The proportion taken by the Government was determined by the Government itself; and, as the ryots were well off or the reverse according as Government took less or more, and left them more or less, the well-being and comfort of the people depended upon arbitrary discretion

exercised with despotic power. We know from history that while the earlier Hindu Rajas took only one-sixth, as much as a half was taken in later times; and, discretion continuing to be the measure of exaction, the very barest subsistence was in some places and on some occasions left to the cultivators of the soil. If any calculation was made for the purpose of fixing the Government demand, it was too often a calculation of what was the least that could be left to the cultivators to enable them to live and produce the next crop. There are some who think that 'custom', even in those days and in the absence of law authoritatively promulgated by the Legislative Department of the State, regulated the share of the produce taken from the ryots; but it has been well remarked that custom might equally well be pleaded in justification of every species of exaction and oppression. Our predecessors in fact (to quote the language of the Board of Commissioners of 1818), do not seem to have admitted as a principle any other general limit to the Government demand than the amount which the cultivators could afford to pay, and the established Government share too often exceeded this limit".[4]

---

4. The report of the Rent Law Commission, 1880, para 40.

Under the Muslim Government "the raiyats cultivated the land and paid khiraj[5] to Government. This khiraj was a share, a portion of the produce which was paid either in kind or in the money which represented its commuted value which the Government itself fixed. As long as the Khiraj was paid, the cultivators were left in possession of the land, though this possession as well as all other terms of the relation depended upon the will of a despotic ruler. Failure to pay the khiraj had for its consequences punishment and the loss of all rights in the land. Such is the general outline of the relation between the two parties having an interest in the soil....If it be asked - is khiraj rent or does it include rent? The answer must be in the negative, if by the term 'rent' is meant rent according to either of the theories of rent propounded by European Political Economists".[6]

It is sometimes said that "rent is a British creation in India". According to Field the statement is true, first, in the sense that "the fund from which

---

5. Khiraj = revenue.
6. The report of the Rent Law Commission, 1880, para 41.

much of the present rent is paid, is the fruit of the peace which the British Government have kept and of the moderation of their fiscal demands"[7]; and secondly, in the sense that "competition rent had no existence in India before the British Rule and so far as it has come into being, it is due wholly to the influence of the British Government and to the results which have accrued therefrom".[8]

The Bengal raiyats paid at the customary rate, which had no uniform relation either to the gross produce or to the net profits. To quote the Land Revenue Commission, Bengal - "customary rates are the general rule in Bengal, and custom is still the main factor in the level of rent.[9] The incidence of rent in Bengal varies widely and has no relation or only a very remote relation to the productivity of the soil".[10] Sir John Shore tells us that "in every district throughout Bengal, where licence of exaction has not superseded all rule, the rents of the land are regulated by known rates called nirk, and in

---

7. C.D.Field, Bengal Code, para 59.
8. Ibid., para 60.
9. The report of the Land Revenue Commission, Bengal, dated 21st March, 1940, Vol.1, para 261.
10. Ibid., para 262.

some districts, each village has its own; these rates are formed, with respect to the produce of the land, at so much per bega...."[11] Lord Cornwallis in his celebrated Minute observed that "whoever cultivates the land, the zemindar can receive no more than the established rent, which in most cases is fully equal to what the cultivator can afford to pay".[12] Under the Permanent Settlement of 1793 "the established rates and usages of the pargana" were taken as the basis of legal rent.[13] The Settlement Regulation[14] mentions "the rate of the nirikbandi of the pargana"; the Bengal Rent Act, 1859, the Bengal Act, 1869 and the Bengal Tenancy Act, 1885 speak of "fair and equitable rates".[15]

The theory "presupposes capital, presupposes capitalist farming conducted with an immediate view to obtaining from capital invested in agriculture the ordinary

---

11. Sir John Shore's Minute dated 18th June, 1789, para 391.
12. Governor General's Minute dated 3rd February, 1790.
13. W.W.Hunter, Bengal Ms. Records, Vol. I, p.55.
14. The Bengal Decennial Settlement Regulation VIII of 1793, sec. 60.
15. The Bengal Rent Act, 1859, sec.5; The Bengal Act, 1869, sec.5; The Bengal Tenancy Act, 1885, Sections 24 and 27.

rate of profit afforded by capital invested in other undertakings".[16] None of these conditions applied to the Bengal raiyats. The Rent Law Commission, 1880 observed that "there are in these provinces (Bengal and Béhar) no capitalist farmers.....There is little or no capital employed in agriculture, unless we include under this term the commonest agricultural implements, the seed grain necessary to produce the next year's crop, the food necessary for the cultivator's subsistance till the next harvest, and it may be, a small stock laid by against the year of famine that is sure to come round in the cycle of seasons. The immediate object of cultivation is subsistence, not profit on capital. There is no wages fund; there are no labourers paid from capital. There are practically no manufacturers, no non-agricultural industries, no great cities of work, where a surplus rural population can find employment. To such a state of things, to a community so circumscribed, the theory of rent propounded by Mr.Ricardo and other Political Economists of the same school has no application; and any adjustment

---

16. The report of the Rent Law Commission, 1880, para 38; C.D.Field, Landholding, pp. 41-42.

of the relations between landlords and tenants in these provinces, based upon this theory, must we apprehend, involve serious risk of error".[17]

Again Ricardo's theory presupposes that the worst land in cultivation that gives no profit pays no rent. Whereas in Bengal "there is no cultivated land which does not yield a rent, for a portion of the produce of every bigha is demandable by the state or by those to whom the state has transferred its rights[18] and the very foundation of the theory is therefore wanting".[19] According to the authorities the Ricardian theory of rent is not applicable to the Bengal raiyats. Field observed that "From the peculiar course of progress in England, and from that state of affairs under which the absolute ownership of the land was, from the close of the seventeenth century, in the hands, not of the cultivators, but of a limited class of proprietors, who were all-powerful in the legislature to regulate measures

---

17. The report of the Rent Law Commission, 1880, para 38.
18. The Bengal Land Revenue Regulation II of 1793, sec.1; The Bengal Revenue Free Lands (Non Badshahi Grants) Regulation 19 of 1793, Preamble; Lord Cornwallis' Minute dated 3rd February, 1790; C.D.Field, Digest, p.204.
19. C.D.Field, Landholding, p.41 fn.5.

with a view to their own interests above all others, there has been evolved a theory of Rent, which, although it may be scientifically correct with reference to the peculiar circumstances of England, is not equally correct when applied, and is, in many instances, not at all applicable, to other countries whose past history and present condition are in many respects, if not altogether, different."[20]

Mitra, in his Tegore Law Lectures, said that "this theory of rent may be true when there is free competition for land and when there is no interference by law or custom causing disturbance to free competition. Increase of population and consequent demand for land and the rise in the value of produce and decrease in the wages of labourers may increase the rate of rent in other countries but in India custom controls the theories of Ricardo and Malthus and the political economists who have followed them".[21]

According to J.S.Mill, the principle of competition gives to the theories of rent, as enunciated by Ricardo and

---

20. Ibid.,p.41.
21. S.C.Mitra, op.cit.,pp.350-51.

Malthus, a scientific character, but competition has never been the exclusive regulator in any country. In Bengal the payment of rent was regulated by custom and not by competition.[22] Mill observed that "in most parts of India there are, and perhaps have always been, only two contracting parties, the landlord and the peasant; the landlord being generally the sovereign, except where he has, by a special instrument, conceded his rights to an individual, who becomes his representative. The payments, however, of the peasants, or ryots as they are termed, have seldom if ever been regulated, as in Ireland, by competition. Though the customs locally obtaining were infinitely various, and though practically no custom could be maintained against the sovereign's will, there was always a rule of some sort common to a neighbourhood; the collector did not make his separate bargain with the peasant, but assessed each according to the rule adopted for the rest".[23]

The truth is that until the country recovered from the shocks of the deadly visitation of 1770 and so long as

---

22. C.D.Field, Bengal Code, para 60.
23. J.S.Mill, op.cit., p.393.

land was plentiful, raiyats had to be induced to cultivate the land. There was no competition amongst the raiyats for land; "if there were competition at all, it was competition amongst the zemindars for raiyats".[24] When population began to increase under the peaceful administration of the British Government, the tables were gradually turned. Then competition for land made its appearance and the zemindars were in a position to dictate their own terms to the raiyats, who had either to accept them or starve.

Under the Bengal Rent Act, 1859, the question as to what principle governed the assessment of rents was discussed by able advocates and in the case of Hills v. Ishar Ghose,[25] Peacock C.J., in the absence of definition of 'rent' in the Act, laid down the doctrine that rent for the Bengal raiyats was economic rent as defined by Malthus. "Rent", said Malthus, "is that portion of the value of the whole produce, which remains to the owner of land, after all the outgoings belonging to its cultivation of whatever kind, have been paid, including the

---

24. C.D.Field, Bengal Code, para 60; W.W.Hunter, Bengal Ms. Records, vol.I, p.134; C.D.Field, Digest, p.228.
25. (1862) Marshall's Reports, p.151 = W.R.Spl.Vol.p.48.

profits of the capital employed, estimated according to the usual or ordinary rate of profits of agricultural stock at the time being".[26] But subsequently the question was discussed in all its bearings in the Great Rent Case[27] in which the majority of the judges held that, whatever the theory of rent applicable to England might be, the customary or pargana rate should be the true basis of ascertainment of rent in India.

The Rent Law Commission, 1880 finally examined the theory of rent as enunciated by Ricardo and Malthus in the light of the custom and conditions of the country from ancient times and was of the opinion that it had no application to the Bengal raiyats.[28] They observed that "whether the question be examined in the light of the ancient constitutional law of the country, or with reference to the high duty and obligation devolving upon Government to promote the happiness and prosperity of the people, the conclusion is the same, namely that the ruling power ought

---

26. T.R.Malthus, Principles of Political Economy (London: John Murray, 1820), p.134; also quoted by Sir C.P.Ilbert in his speech dated 2nd March, 1883 = Selections, p.45.
27. Thakooranee v. Bisheshur (1865) B.L.R. Sup.vol.202 at 225 F.B.
28. The report of the Rent Law Commission, 1880, para 38; H.H.Risley, Article on "The Bengal Tenancy Act " = The Calcutta Review, 1886, vol.LXXXIII,p.113.

to determine the rents payable in these provinces by the ryots to the zemindars"[29] as was the practice of the Hindu and Muslim sovereigns.[30] The matter could not properly be left to be settled by competition.[31] The conclusion to which the Commission arrived at was that "the appropriate theory of Rent is not that it is the surplus profit of capital applied to agriculture, or that it depends immediately upon, or is regulated by, the profits of capital; but that it is such a proportion of the produce of the soil, deliverable in kind, or payable in money, as the Government may from time to time determine shall be delivered or paid by the cultivators to the zemindars or those to whom the zemindars have transferred their rights. If it be asked on what principle Government should determine this proportion - what share shall be considered fair and equitable - our answer is - such a share as shall leave enough to the cultivator of the soil to enable him to carry on the cultivation, to live in a

---

29. The report of the Rent Law Commission, 1880, para 46.
30. Ibid., para 44.
31. Ibid., para 45.

reasonable comfort, and to participate to a reasonable extent in the progress and improving prosperity of his native land".[32] Adopting this view, the Commissioners in their draft Bill defined rent as "whatever is payable or deliverable by a tenure-holder, undertenure-holder, or occupancy ryot to the proprietor, tenure-holder, or under-tenure-holder possessing interest immediately superior in the land held by him, in recognition and satisfaction of such superior interest; or whatever is payable or deliverable as a return or compensation for the use or occupation of land or for any rights of pasturage, forest rights, fisheries, or the like".[33] This definition was finally adopted by the legislature in section 3, clause (5)[34] of the Bengal Tenancy Act, 1885 which defined rent as "whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant."

---

32. Ibid., para 46.
33. The draft Bill prepared by the Rent Law Commission, 1880, sec.3.
34. Clause (5) was renumbered as clause (13) by section 129 of the Bengal Tenancy (Amendment) Act, 1928.

Sec.2. Liability to pay rent.

During the continuance of the relationship of landlord and tenant, it was the primary duty of a raiyat to pay the rent of his holding,[35] unless exempted by a special contract with his landlord.[36] Under the Rent Acts of 1859 and 1869, non-payment of rent rendered a raiyat liable to be ejected from his holding.[37] Section 6 of those statutes provided that a raiyat had an occupancy right in land "so long as he paid the rent payable on account of the same". It was accordingly held that, though non-payment of rent did not bar the acquisition of an occupancy right, payment of rent was necessary to maintain it.[38] Thus where a raiyat had been dispossessed and had failed to pay rent for some years, it was held in a suit by him for possession that he had no subsisting right of occupancy.[39] In other words, payment of rent was a condition precedent to having or continuing to have, an occupancy right. So it shows that non-payment of rent

---

35. The Bengal Rent Act, 1859, sections 3,5,8; The Bengal Act, 1869, sections, 3,5,8; The Bengal Tenancy Act,1885, sections, 18, 24, 42.
36. The Bengal Tenancy Act, 1885, sec. 3 (17).
37. The Bengal Rent Act, 1859, sec. 21; The Bengal Act, 1869, sec.22.
38. Narain v. Opnit (1882) I.L.R.9 Cal.304.
39. Hem v. Chand (1885) I.L.R. 12 Cal. 115 (116).

involved serious consequences under those statutes, even to the extent of changing the status of the tenant.[40] But in course of time the rigour of the law came to be softened by considerations of equity and the court held that mere non-payment of rent did not necessarily amount to a forfeiture of the right of occupancy,[41] though it might, coupled with other circumstances, imply a relinquishment.[42]

All these difficulties, however, were removed by the Bengal Tenancy Act, 1885, under which non-payment of rent was no ground for ejectment of a raiyat at fixed rates or an occupancy raiyat but their holdings were liable to be sold in execution of a decree for arrears of rent.[43] It was only a non-occupancy raiyat who could be ejected for non-payment of rent.[44]

"It is the liability," said Rampini, "to pay rent which establishes the relation of landlord and tenant.

---

40. Hem v. Ashgar (1894) I.L.R.,4 Cal. 894.
41. Musyatullah v. Noorzahan (1883) I.L.R. 9 Cal. 808.
42. Nilmani v. Sonatun (1887) I.L.R. 15 Cal. 17.
43. The Bengal Tenancy Act, 1885, sec. 65.
44. Ibid., sec. 44(a). But this sub-section was subsequently omitted by the Bengal Tenancy East Bengal (Amendment) Act, 1949.

The actual payment of rent is not necessary to constitute or maintain that relation, and mere non-payment does not determine it".[45] Even the heirs of an occupancy raiyat, dying intestate, were liable for the rent of the holding whether they held it or not, unless they surrendered it or did something from which a surrender might be inferred.[46]

Regarding the liability for rent on change of landlord, it was provided that a raiyat should not, when his landlord's interest was transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee, before the payment, gave notice of the transfer to the raiyat.[47] But if a raiyat, after receiving notice of the transfer, chose to pay his rent to the former landlord, he did so at his own risk and could not plead such payment in answer to a suit for rent by the new landlord.[48]

---

45. Rampini, op.cit., pp.26-27 and the cases noted therein.
46. Supra, p.240.
47. The Bengal Tenancy Act, 1885, sec. 72.
48. Azim v. Ramlal, (1897) I.L.R.,25 Cal. 324 at 330.

We have seen[49] that before the Bengal Tenancy (Amendment) Act, 1928 an occupancy holding was transferable only with the consent of the landlord or if it was sanctioned by custom. This raised the question who would be liable to pay rent if the holding was transferred? "To meet those cases", said the Select Committee, "in which transfer without the landlord's consent is a valid custom, we have provided in section 73 that until notice of such transfer is duly served on the landlord, the transferor and the transferee shall be jointly and severally liable for arrears of rent accruing after the transfer".[50] Section 73 of the Bengal Tenancy Act, 1885 ran as follows:

> "73. When an occupancy raiyat transfers his holding without the consent of the landlord, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent accruing due after the transfer, unless and until notice of the transfer is given to the landlord in the prescribed manner."

When the occupancy holding was made transferable by

---

49. Supra, p.212.
50. The report of the Select Committee on the Bengal Tenancy Bill dated 12th February 1885, para 34 = Selections, p.406.

Sec. 26 B[51] introduced by the Bengal Tenancy (Amendment) Act, 1928 with notice to the landlord,[52] the transferee alone was liable for rent due after the transfer. This made it unnecessary to apply the provisions of section 73 to this situation. It was, therefore, proposed to repeal that section. The legislature, however, instead of repealing the section, enacted as follows:-

"73. When an occupancy raiyat transfers his holding in whole or in part the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent due before the transfer:

Provided that the transferor shall not be liable to the landlord for such arrears of rent if the transferee has agreed to pay such arrears to the landlord and the fact has been mentioned in the instrument of transfer."

Regarding the liability for rent of a co-sharer raiyat, we find that judicial opinion was not uniform. From an analysis of the case-law before the Amending Act of 1928, the following propositions seem to have been established by different rulings:-

(a) If lands were let out to two or more tenants, their liability to pay rent was joint and several.[53]

---

51. Supra, p.220.
52. The Bengal Tenancy Act, 1885, sec. 26 C as amended by the Acts of 1928 and 1938.
53. Joy Gobind v. Monmotha, (1906) I.L.R.33 Cal. 580 at 582; Jogendra v. Nagendra, (1907) 11 C.W.N. 1026; Shaik v. Krishna, (1916) 24 C.L.J. 371.

(b) If lands were let out to one or more tenants and others became entitled to the tenancy right by transfer, the liability of the transferees was joint and several.[54]

(c) When the contract of tenancy was with a single person as tenant, the liability of his heirs upon his death was a joint liability and not a joint and several liability.[55]

With regard to the last proposition there was a divergence of opinion and the matter came to be investigated by a Full Bench in Jagannohan v. Brojendra,[56] in which it was laid down by the majority of the Judges that a suit for rent was maintainable against some of the heirs or successors-in-interest of a deceased tenant, without bringing all the heirs or successors-in-interest on the record. As to the several liability of each co-sharer tenant by transfer, succession or otherwise, Ghose J, in delivering the judgment, observed:[57]

---

54. Kishori v. Ananta, (1905) 10 C.W.N. 270; Dhunput v. Shamsoonder, (1879) I.L.R. 5 Cal. 291.
55. Kasi v. Satyendra, (1910) 15 C.W.N.191; Shaik v.Krishna, (1916) 24 C.L.J.371; Krishna v. Kalitara, (1917) 22 C.W.N. 289.
56. (1925) I.L.R. 53 Cal. 197 F.B.
57. Ibid.,pp. 204-205.

"The liability of a tenant to pay rent arises from the fact of possession of the land as a tenant where there is no express contract, and all persons in possession of land as tenants are under an implied obligation to pay the rent for the land to the landlord, whether they get into possession by right of succession or assignment. A tenant-in-common is entitled to possession of every part of the estate and there is privity of estate between him and the landlord in the whole of the leasehold. The law imposes a liability on a tenant-in-common based on privity of estate for all covenants running with the land and his estate is an estate in the whole of the leasehold, there is no reason why he should not be liable for the entire rent.....Thus where a contract is implied for payment of rent by all tenants in common in possession of a leasehold, or whether it is held that the law imposes the liability for payment of rent by reason of privity of estate, any one of such tenants may be sued for the entire rent due to the landlord. This may be either in accordance with the provisions of section 43 of the Indian Contract Act, which applies to express as well as implied promises or under the general law based on privity of estate. It is hardly

necessary to add that a decree in such a suit will not have the effect of a decree for rent under Chapter XIV[58] of the Bengal Tenancy Act."

Following that Full Bench decision, a new section 146A was inserted by the Bengal Tenancy (Amendment) Act, 1928 declaring that all co-sharer raiyats were jointly and severally liable for rent and a decree in a rent suit was binding on co-sharers under certain circumstances, although they were not made parties to the suit. Section 146A ran thus:-

"146A. (1) Notwithstanding anything contained in the Indian Contract Act, 1872, all co-sharer tenants in a tenure or holding and their successors-in-interest shall be liable to the landlord jointly and severally for the rent payable to such landlord on account of the tenure or holding, whether such rent has accrued during the time of their own occupation or during the time of the occupation of their predecessors-in-interest."

"(2) Notwithstanding anything contained elsewhere in this Act or in any other law a decree for arrears of rent of a tenure or holding and a sale in execution of such decree shall be valid against all the co-tenants, whether they have been made parties defendant to the suit or not and against the holding in the manner provided in Chapter XIV, if the defendants to the suit represented the entire body of co-sharer tenants in the tenure or holding for the rent of which the suit was brought."

"(3) The entire body of co-sharer tenants in a tenure or holding shall for the purposes of sub-section (2)

---

58. This chapter dealt with sale for arrears under decree.

be deemed to be represented by the defendants to the suit if such defendants include -

"(i) all co-sharer tenants in the tenure or holding whose homestead are situated in the village in which the tenure or holding is situated;

"(ii) such of the co-sharer tenants in the tenure or holding as have, at any time during the three years previous to that for the rent of which the suit is brought, made any payment of rent for the tenure or holding;

"(iii) such co-sharer tenants who having purchased an interest in the tenure or holding, have given notice of the purchase under sub-section (3) of section 12, or (section 26C[59] .....[60]) as the case may be, or who having succeeded to an interest by inheritance have given notice of their succession under section 15; and

"(iv) all other co-sharer tenants in the tenure or holding whose names are entered in the landlord's rent-roll."

An amendment was moved in the Council to omit sub-sec 2 and 3 but the motion was lost. In opposing that amendment Mr.P.N.Choudhury, a member for the Government, explained thus the object of the new section:

"Sub-section (1) and (2) incorporate the existing law on the subject. There was some conflict of judicial opinion as to joint and several liability of the heirs of the original tenant who made the contract, for the entire

---

59. The word, figure and letter within bracket were substituted for the words, figures and letters "Section 26E or section 26F" by section 10 of the Bengal Tenancy (Amendment) Act, 1930.

60. The words, figure and letter "or section 26E," were omitted by section 29 of the Bengal Tenancy (Amendment) Act,1938.

rent due, but recently in a Full Bench decision,[61] it was held that all persons in possession of land as tenants are under an implied obligation to pay the rent for the land to the landlord whether they get into possession by right of succession or assignment, under the privity of estate which exists between each one of them and the landlord in the whole of the leasehold. Either on this ground or because a contract is implied for payment of rent by all tenants in common in possession of a lease-hold, any one of such tenants may be sued for the entire rent due to the landlord. So the question of joint and several liability has been set at rest by this Full Bench decision. The law as to representation of co-sharer tenants by one of them is well settled. As Sir Lawrence Jenkins said in the case of Chamatkarini Dasi v. Trigunanath,[62] the authorities sanction the view that where one of a number of tenants is put forward by the rest as their representative, he can be regarded as the sole tenant for the purpose of a suit for arrears of rent

---

61. Jaganmohan v. Brojendra, (1925) I.L.R.53 Cal.197 F.B.
62. (1913) 17 C.W.N.833.

within Chapter 14 and the entire tenancy will pass in execution of the decree. No new law has been propounded in these two sub-sections.....In sub section 3 an attempt has been made to state the facts which would constitute representation as exhaustively as possible and to make the law on the point definite and clear, so that neither the landlord nor the tenant may suffer any hardship or inconvenience."[63]

It was stated in the notes on the clauses of the Bill of 1928 that "the principle of section 146A in the Bill of 1925 regarding joint and several liability of co-sharer tenants for rent was accepted by the Select Committee.[64] This makes a decree in a rent suit binding on co-tenants under certain circumstances, although they were not made parties. The Select Committee considered that actual residence in the village of such co-tenants need not be a necessary condition but it should suffice if they have a homestead in it. Section (3)(1) of the

---

63. Bengal Legislative Council Proceedings,1928,Vol,XXX,No.2, p.898.
64. The report of the Select Committee on the Bill of 1926, clause 87 = The Calcutta Gazette dated July 22,1926, Part IV,p.65; The report of Sir John Keer Committee of December 1922, para 22 = The Calcutta Gazette dated 10th January 1923, Part IV,p.7; The statement of objects and reasons for the Bill of 1925, para 7 = The Calcutta Gazette dated July 12, 1928, Part IV,p.95.

new section 146A has been drafted accordingly. The Select Committee also thought that the procedure for registering a co-sharer tenant's name through the collector was likely to lead to complications. Sub-section (4) in the proposed section 146A has accordingly been omitted; but sub-section (3)(iii) of that section has been revised so as to provide for cases in which the purchaser of or successor to a co-sharer tenant's interest has given notice...."[65]

Now we pass to the liability of a purchaser of a holding at a rent sale. Before the introduction of section 168A by the Bengal Tenancy (Amendment) Act,1940, a purchaser was liable to pay rent from the date of confirmation of sale, because his purchase dated under sec 159(2) from that date. That sub-section provided that "notwithstanding anything contained in the Civil Procedure Code, 1908, whenever a tenure or holding is sold in execution of a decree for arrears of rent and the sale is confirmed, the purchase shall take effect from the date of confirmation of sale." As the interest of the judgment debtor tenant continued up to the date of confirmation of

---

65. The notes on clause 91 of the Bill of 1928 = The Calcutta Gazette dated July 12, 1928, part IV,p.102.

sale, his liability to pay rent continued up to that date. Consequently the purchaser was not liable for arrears becoming due in the period intervening between the institution of the suit and the confirmation of the sale.[66] If a third party purchased a holding and there were surplus sale proceeds, the decree-holder was entitled to realise the rent falling due after the institution of the suit and before the confirmation of the sale out of the surplus sale proceeds,[67] to which the judgment-debtor was entitled after the sale.[68] But a third party purchaser was not obliged to bid so high as to leave a balance for payment of the decree-holder's dues. Where there were no surplus sale proceeds to cover the rent of that period, the decree-holder was entitled to bring another suit for a personal decree for the arrears still due against the tenant.

Since the Amendment Act of 1940, the purchaser was liable under section 168A(1)(b) to pay, inter alia, the rent which was payable between the date of the institution

---

66. Faez v. Ramsukh (1893) I.L.R.21 Cal.169.
67. The Bengal Tenancy Act, 1885, sec. 169(1)(c).
68. Ibid.,sec.169 (1)(d).

of the suit and the date of the confirmation of the sale.[69] Clause (b) of that sub-section ran as follows:-

"168A.(1)(b) the purchaser at a sale....shall be liable to pay to the decree-holder or certificate holder the deficiency, if any, between the purchase-price and the amount due under the decree or certificate together with the costs incurred in bringing the tenure or holding to sale and any rent which may have become payable to the decree-holder between the date of the institution of the suit and the date of the confirmation of the sale."

Sub-sec (3) of that section provided that "a sale referred to.....shall not be confirmed until the purchaser has deposited with the Court or Certificate-Officer, as the case may be, the sum referred to in clause (b) of that sub-section". The word 'purchaser' in sub-section 1(b) and (3) included the decree-holder-purchaser; it was not limited to a stranger purchaser only. Consequently when the decree-holder was the purchaser, he was bound to deposit under sub-sec (3) the rent that accrued due subsequent to the institution of the suit (for payment to himself) or to certify to the Court that nothing was due or payable to him on that account.[70] The effect of the new sub-section 1(b) was "to exonerate the tenant from all further liability",[71]

---

69. Phani v. Purna (1943) 48 C.W.N. 210 at 212.
70. Ibid.
71. Ibid.,p.211.

for any rent due after the institution of the suit, even though he continued to be in possession until the purchaser took delivery of possession.[72] The price to be paid by the purchaser should cover up at least the items specified in clauses (a), (b) and (c) of sec 169(1) of the Act. Clause (a) referred to the costs incurred by the decree-holder in bringing the holding to sale; clause (b) referred to the amount due to him under the decree in execution of which the sale was made; clause (c) laid down that "if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom...any rent which may have fallen due to him in respect of the.....holding between the institution of the suit and the date of the confirmation of the sale". If the bid at the sale was not sufficiently high, the purchaser was liable to make good the deficiency before the confirmation of the sale under sub-section (3) of sec 168A of the Act.

---

72. In such a case the remedy of an auction purchaser was to sue the judgment-debtor for mesne profits for the period subsequent to the date of the confirmation of sale from which date the title passed from the judgment-debtor to the auction purchaser.

To sum up, a raiyat was liable to pay the rent of his holding to his landlord. When a landlord, who had transferred his interest to another person, received from the raiyat, the rent which became due after the transfer, the raiyat was not liable for such rent unless the transferee landlord gave, before the payment, notice of the transfer to the raiyat. Regarding the liability of an occupancy holding for rent after transfer, it was the law before the Bengal Tenancy (Amendment) Act, 1928 that both the transferor and transferee were jointly and severally liable for arrears of rent accruing after the transfer. Since the Amendment in 1928, the liability of the transferor and transferee has been joint and several for arrears of rent due before the transfer, unless the transferee agreed to pay such arrears and the fact was mentioned in the instrument of transfer. In a tenancy in common all co-sharer raiyats were jointly and severally liable for the rent. Where one of a number of co-sharer raiyats was put forward by the rest as their representative, he could be regarded as the sole tenant for the purpose of a suit for arrears of rent and a decree passed against him would be binding against the other co-sharers too and would have the effect of a rent decree within the meaning of Chapter

XIV of the Bengal Tenancy Act, even though the other co-sharers were not parties to the suit. In such a representative suit the landlord must implead as defendants all persons enumerated under each of the four clauses of sub-section 3. But the question whether the defendants represented the entire body of co-sharer tenants was a question of fact. The representation did not solely depend on the provisions of sub-section 3 of section 146A of the Bengal Tenancy Act. There might be representation in fact apart from these statutory representatives. Thus where a Muslim raiyat died leaving sons and daughters and the landlord in his rent suit impleaded only the sons, who alone were in possession and who alone paid rent, the sons were taken to have fully represented the tenancy, in the absence of proof that any of the persons specified in section 146A(3) were left out.[73]

Before the Amendment Act of 1940, a purchaser of a holding at a rent sale was liable to pay rent from the date of confirmation of sale. The judgment-debtor tenant

---

I.L.R.

73. Suratan v. Lutu, (1942)/1 Cal.523.

was liable to pay the rent from the institution of the suit till the confirmation of sale. But since that amendment the purchaser had to pay the arrears prior to the confirmation of sale, though his title to the land commenced only from that date.

Sec.3. Rate of rent.

The rate of rent was one of the most fertile sources of disagreement between a raiyat and his landlord. The arbitrary exaction of rent on the part of the latter was the cause of much misery to the Bengal raiyats. Their situation was much improved by the Bengal Tenancy Act,1885.

By section 3 of the Rent Acts of 1859 and 1869 it was enacted that raiyats, who held lands at fixed rates of rent, which had not been changed since the Permanent Settlement, were entitled to receive pattas at those rates. If the zemindar could show that the rent had been changed or had been fixed at some time after the Permanent Settlement, he could legally demand an enhanced rate of rent from the raiyats who, moreover, would not come within the preferential category of raiyats at fixed rates. Under

the Bengal Tenancy Act, 1885 the rent or rate of rent of a raiyat at fixed rates was fixed in perpetuity but it was not necessary that he should have held land from the time of the Permanent Settlement.

As it might be difficult to furnish evidence of a uniform payment of rent since the Permanent Settlement, it was provided in section 4 of the Rent Acts of 1859 and 1869 that "whenever in any suit under this Act, it shall be proved that the rent at which land is held by a ryot has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the Permanent Settlement, unless the contrary be shown." This presumption caused resentment among the zemindars, who in 1880 represented to the Rent Law Commission of that year that this presumption bore very hardly upon them; if a tenant succeeded in proving payment of rent for twenty years at the same rate, it would be difficult, if not impossible, for his landlord to rebut the presumption raised by the Act; it made zemindars reluctant to allow tenants to remain undisturbed paying the same rent for twenty years; the zemindars were in consequence forced into

litigation, lest their rights should pass away sub silentio.[74] These arguments failed to convince the majority of the commissioners who observed that "if the law were now changed, the change would destroy titles which have become perfected by presumption".[75] According to their recommendation similar rules and presumptions as to the fixity of rent were provided in sub-sections (1) and (2) of section 50 of the Bengal Tenancy Act, 1885 which ran as follows:-

"50. (1) Where a tenure-holder or raiyat and his predecessors-in-interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding.

"(2) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or raiyat and his predecessors-in-interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement";

In order to prove that a tenant was holding land at a uniform rate of rent for twenty years, it was not

---

74. The report of the Rent Law Commission, 1880 para 24 read with para 27.
75. Ibid.

necessary that he should prove payment of rent for all those years and produce dakhilas (rent receipts) for every one of those twenty years.[76] When receipts at a uniform rate during the period of twenty years were filed but receipts for some years in the period were missing, uniform payment at the same rate in the years for which no receipts were filed might still be proved by other evidences and from the surrounding circumstances.[77] Let us now refer to some of the cases which were followed in arriving at this decision. In Kattyani v. Soonduree[78] the learned judges observed: "It is not absolutely necessary that dakhilas should be for twenty consecutive years before the date of the suit, for it might frequently happen that parties with every right to the presumption might lose one or two dakhilas here and there during such a long period; and it would be manifestly unjust to deprive them of the benefit allowed by law when no suspicion could arise of misfeasance merely because one or two of these receipts has been missing or lost."

---

76. Golum Husain v. K.S.Bonerjee (1925) 30 C.W.N.520 at 521.
77. Elahee v. Roopun (1867) 7 W.R. 284; Satis v. Nil Madhub (1922) 37 C.L.J. 598 = A.I.R. 1923 Cal. 665; Golum Husain v. K.S.Bonerjee (1925) 30 C.W.N. 520.
78. (1865) 2 W.R. (Act X) 60.

The same view was affirmed in Elahee v. Roopun[79] where Pundit J. said: "when receipts are filed not for the entire period of twenty years preceding the suit, but some are wanting here and some there in that interval, still uniform payment may be proved otherwise for the wanting years by other proof and from surrounding circumstances". The same view was taken in Catherine v. Huro[80] in which Phear J., observed: "To support a finding of uniformity for any given number of years, it is not necessary that there should be evidence bearing directly on every year of that number; it is sufficient if the whole space of that time is included between limits upon which the evidence bears, provided that that evidence is such as to lead to the belief that the rent was uniform throughout the intervening period". In Satish v. Nilmadhub[81] Mookerjee J., said: "What has to be established is, not that rent has been actually paid at uniform rate during twenty years, but that the tenant has held at a rent or rate of rent which has not been changed during twenty years. Such holding may be established even if it is

---

79. (1867) 7 W.R. 284 at 285.
80. (1867) 8 W.R. 284 at 285.
81. (1922) 37 C.L.J. 598 = A.I.R. 1923 Cal. 665 at 667; also Jiban v. Muralidhar (1924) 97 I.C.513.

not proved that rent has actually been paid during a portion of the twenty years. This is precisely the interpretation adopted in Mohini v. Preo Nath"[82].

In Pran v. Kanta[83] the tenant produced three dakhilas for the year 1299, 1311 and 1323 B.S. to prove the uniformity of rent. There were two intervals of twelve years each between the dates of the dakhilas. The learned judges observed that, in the absence of anything to show that there was any change in the tenancy or any alteration in the rent during those intervening periods it should have been held that the tenant was entitled to the presumption under section 50(2) of the Bengal Tenancy Act, 1885. The presumption under that section was not rebutted by the landlord proving a slight variation in the rent, which could be sufficiently explained.[84] But it was for the tenant to explain the variation.[85] The presumption, however, did not apply where the origin of a tenancy was known[86] or where a record-of-rights was prepared.[87]

---

82. A.I.R. 1922 Cal. 141.
83. (1924) 39 C.L.J.437 = A.I.R. 1924 Cal. 875.
84. Elahee v. Roopun (1867) 7 W.R. 284; W.M.Grant v. Har Sahey (1913) 19 C.W.N.117.
85. Manmoth v. Anath (1918) 23 C.W.N. 201.
86. Secretary of State v. Ram (1922) 70I.C.207; Secretary of State v. Sarat (1924) 40 C.L.J.235.
87. The Bengal Tenancy Act, 1885, sec.115.

Under the earlier laws[88] it was held that where a number of jamas or tenancies, which were held at fixed rates, were consolidated into one holding or tenancy, the fixity of rent was not affected by the consolidation and the tenant was entitled to claim the benefit of the rule and the presumption of fixity of rent.[89] But if any one of the tenancies was proved to have been created after the Permanent Settlement, the presumption did not arise as regards the whole of the consolidated rent.[90] Again the tenant was entitled to claim the benefit of the rule and the presumption, when a tenancy was sub-divided and the rent apportioned to the different shares or when a portion of the tenancy was alienated or relinquished and the rent reduced on account of such alienation or relinquishment.[91] Following the earlier rulings the Rent Law Commission, 1880 reported that "the operation of the rule as to holdings at fixed rate is not affected by the fact of the land having been demised to different persons, or transferred, or separated from other land which with it

---

88. The Bengal Rent Act, 1859 and the Bengal Act,1869.
89. Kazee v. Nobo, (1866) 5 W.R. (Act X) 53; Sukhi v. Gunga, (1864) W.R.Gape vol. (Act X) 126; Raj Kishore v. Hareehur, (1868) 10 W.R.117.
90. Moula v. Judoonath, (1874) 21 W.R.267.
91. Hills v. Hurolal, (1865) 3 W.R. (Act X) 135; Kenaram v. Ramcomar (1865) 2 W.R. (Act X) 17; Soodha v. Ram, (1873) 20 W.R. 419.

formed a single holding, or amalgamated with other land into one holding, so long as the rate of rent has not been altered by any of these transactions"[92] The view of the Commission received statutory recognition in the Bengal Tenancy Act, 1885 which enacted that "the operation of this section (rule of presumption), so far as it relates to land held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding."[93]

Turning now to the occupancy raiyats, it was provided in section 5 of the Rent Acts of 1859 and 1869 that they were entitled to receive pattas at fair and equitable rates and, in case of dispute, the rate previously paid by the raiyat was deemed to be fair and equitable, unless the contrary was shown in a suit by either party under the provisions of the Act. Similarly section 24 of the Bengal Tenancy Act, 1885 provided that "an occupancy raiyat shall pay rent for his holding at fair and equitable rates". The landlord was entitled to claim no more and an occupancy

---

92. The report of the Rent Law Commission, 1880, para 27.
93. The Bengal Tenancy Act, 1885, sec.50(3).

raiyat was not entitled to pay less than the fair and equitable rate. Under the Bengal Rent Act, 1859 it was held[94] that "fair and equitable rent" meant, not the rate obtainable by open competition, but the prevailing rate payable by the same class of raiyats for land of a similar description and with similar advantages in places adjacent i.e. the customary or pargana rate; and that what was fair and equitable depended upon the value of the produce and cost of cultivation.[95] According to the Rent Law Commission, 1880, 'fair and equitable rent' meant "such a share as shall leave enough to the cultivator of the soil to enable him to carry on the cultivation, to live in a reasonable comfort and to participate to a reasonable extent in the progress and improving prosperity of his native land".[96] Under the Bengal Tenancy Act,1885, "the rent for the time being payable by an occupancy raiyat shall be presumed to be fair and equitable until the contrary is proved".[97] Finucane and Ameer Ali observed that "the existing rent is the result of the customs,traditions

---

94. Thakooranee v. Bisheshur, (1865) B.L.R. Sup.vol.202 at 228-29 F.B.
95. Hills v. Ishore Ghose (1862) Marshall's Reports, p.151 at 160 = W.R. Spl.vol.p.48.
96. Supra, pp 311-12
97. The Bengal Tenancy Act, 1885, sec.27.

experience, oppression, and haggling of all the preceding ages, and is therefore presumed to be fair till the contrary is proved. It is for anybody who requires the existing rents to be altered to produce evidence in support of his contention".[98]

The presumption in favour of the existing rent being the fair and equitable rent might be rebutted by showing (a) that the rent paid by the raiyat was below the prevailing rate or that the average prices of staple food-crops had risen during the currency of the present rent, or that the productive powers of the land had been increased by an improvement effected by the landlord or that the productive powers of the land had been increased by fluvial action,[99] in which cases the existing rent must be enhanced in order to arrive at a "fair and equitable" rent; or (b) that there had been a fall in the average prices of staple food-crops during the currency of the present rent or that the soil had deteriorated owing to a deposit of sand or the like,[1] in which latter cases the existing rent would have to be reduced in order to arrive

---

98. Finucane and Ameer Ali, op.cit.,p.158.
99. The Bengal Tenancy Act, 1885, sec.30
1. Ibid.,sec.38.

at a fair and equitable rent within the meaning of the Act.

Where there was no written contract as to the amount of rent or if the written contract, if any, was not forthcoming and the question arose as to the amount of rent in a particular year, the rent paid in the preceding year was assumed to be the rent payable during that year.[2] This presumption was applicable even to a non-occupancy raiyat. It applied not only in respect of a particular year, but also to successive years one after another, unless its operation was arrested by proof on the part of the tenant that the condition of the tenancy had altered.[3]

Turning now to the raiyats without rights of occupancy, it was provided in section 8 of the Rent Acts of 1859 and 1869 that they were entitled to pattas only at such rates as might be agreed on between them and the persons to whom rent was payable. As regards the construction of that provision Peacock C.J. observed:[4]

---

2. Ibid., sec.51.
3. Rajabala v. Srish, (1914) 25 I.C. 552.
4. Sheikh v. Sheikh (1863) Marshall's Reports, 341 at 342-43.

"The meaning of that section is, that if a party wants a pottah, and has not a right of occupancy, he must come to some agreement with his landlord as to the amount of his rent. In this case the ryot has made no agreement as to the rate of rent, but he wants us to fix the rent, which he has no right to ask the Court to do, and which would be equivalent to ordering that he should get a pottah for one year at the rate contended for. If he has no right of occupancy, and the landlord has demanded too much rent and distrained his goods, he might have brought a suit for excessive demand of rent; or if the landlord had sued him for the full amount mentioned in the notice, he might have resisted that suit, and maintained that the amount demanded was larger than he ought to pay. Not having a right of occupancy, the tenant has no right to remain in the land, unless he can agree with the landlord as to the amount of rent."

But if the raiyat remained on the land, the landlord could only recover from him a fair and equitable rate of rent. In Ram v. Madhoo,[5] Jackson, J., observed that

---

5. (1869) 11 W.R. 304 at 305.

"the defendant has no right of occupancy, but when the plaintiff, instead of giving him notice to quit the land, chooses to retain him as a tenant, and asks the Court to compel that tenant to enter into an engagement to pay rent, the Court, I think, is bound to see that it does not enforce the payment of any rates, but such as are just and equitable". In a Full Bench decision in Bakranath v. Binodram[6], Peacock C.J. said that a raiyat not having a right of occupancy was not at liberty to compel his landlord to give him a pattah at any rent he pleased.

Mr.Bell drew the conclusion from those cases that "a zemindar can eject a ryot not having a right of occupancy, who refuses to pay the rent demanded of him. But if the zemindar permits a ryot to stay on, he can only recover from him a fair and equitable rent. A ryot not having a right of occupancy can not sue his landlord for a pottah; but if he is sued by his landlord for an enhanced rate of rent, he can plead that the amount claimed is not fair and equitable; or if his goods have been

---

6. (1868) 1 B.L.R.(F.B) 25 at 31.

distrained, he can bring a suit against his landlord for an excessive demand of rent".[7]

The Bengal Tenancy Act,1885 consolidated the existing law by providing in section 42 that "when a non-occupancy-raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission". The initial rent of a non-occupancy raiyat thus remained a competitive rent under the provision of the Act and any amount could be fixed by stipulation at the time of his admission. Therefore an agreement by such a raiyat to pay rupees 3 per bigha for the first five years and thereafter rupees 5 per bigha was held[8] to be perfectly valid. But if the raiyat was allowed to hold over after the expiry of the first term, the landlord could not compel him to pay any rent he liked. If the raiyat did not agree to the rent demanded under a draft agreement and the landlord thereupon instituted a suit to eject him, the Court had to

---

7. H.Bell, op.cit., p.19.
8. Ganpat v. Jasodhar, (1895) 17 C.L.J.590.

determine what rent was fair and equitable for the holding.[9] If he agreed to pay the rent so determined, he was entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement but on the expiration of that term he was liable to ejectment, subject to the provisions of the Act, unless he acquired a right of occupancy.[10] If he did not agree to pay the rent so determined, he was liable to ejectment.[11]

Sec.4. Alteration of rent on change of area.

The area included within a raiyat's holding may be changed, i.e., it may be increased or decreased for various reasons. It is fair and reasonable that the rent payable for the holding should also be revised accordingly. The guiding principle, as observed by Finucane and Ameer Ali, was that "if a tenant is let into

---

9. The Bengal Tenancy Act, 1885, sec.46, sub-sec.(6).
10. Ibid., sub-sec.(7).
11. Ibid.,sub-sec.(8); sec.44(d).

occupation of a certain quantity of land for a certain lump rent, or at a certain rate of rent, and if he afterwards acquires more land over and above what was originally let out, the surplus is excess area, and the tenant is liable to pay additional rent for it; while a tenant is entitled to a reduction of rent in the contrary case".[12]

Regarding increase of rent on increase in area it was provided in section 17 of the Rent Act of 1859 and 1869 that "no ryot having a right of occupancy shall be liable to an enhancement of the rent previously paid by him, except on some of the following grounds, namely:.....That the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him". In those sections the legislature made provisions for an increase of rent on an enhancement of area only in respect of a raiyat having a right of occupancy but the Bengal Tenancy Act,1885 made provisions for all classes of raiyats.[13] When the rent was increased on this ground, the legislature called it an "enhancement of rent". But this could scarcely be said

---

12. M.Finucane and Ameer Ali, op.cit.p.269.
13. The Bengal Tenancy Act, 1885, sec.52, sub-sec.1,cl(a).

to be such an enhancement in the more accurate acceptation of the term.[14] In this regard the Rent Law Commission,1880 observed:-

"The ground is, in our opinion, misnamed a ground of enhancement. If the quantity of land held by a ryot is found upon measurement to be greater than the quantity for which he has been paying rent, and if he is compelled to pay rent for the excess, the whole rent payable by him is increased, but the rate of rent payable is not increased, and the term 'enhancement' might well be confined to the latter increase".[15]

The land in excess of the area might be acquired by a raiyat by encroachment (a) on the adjoining land of his own landlord, or (b) on the land of other tenants of the same landlord, or (c) on the land of a third person, or (d) by accretion.

When a raiyat encroached upon adjoining land, the title to which was with his own landlord, it was at first held that the landlord's only remedy was to treat him as a

---

14. C.D.Field, Digest,p.234.
15. The report of the Rent Law Commission, 1880, para 54.

trespasser,[16] but in subsequent cases it was ruled that the landlord could either treat him as a trespasser or a tenant liable to pay additional rent for the excess land occupied by him by means of such encroachment.[17] The tenant, however, had no right to compel the landlord, against his will, to accept him as a tenant in respect of the excess land.[18] But once the landlord elected to treat him as a tenant, he could not afterwards treat him as a trespasser.[19] The landlord's right to assess additional rent in respect of the lands encroached upon might be altogether lost, if the tenant held the encroached land as part of the original holding and, for more than twelve years prior to the suit, denied the landlord's right to any separate rent from him in respect thereof and forcibly, in assertion of his claim, appropriated the entire crop and thereafter continued in possession.[20] In such a case the landlord could not recover additional rent

---

16. Rashum v. Bissonath (1866) 6 W.R. (Act X),57.
17. David v. Ramdhan (1866) 6 W.R.(Act X) 97; Rajmohun v. Gooroo (1866) 6 W.R.(Act X) 106; Sham v. Doorga (1867) 7 W.R. 122 at 123; Gooroo v. Issur (1874) 22 W.R.246; Prohlad v. Kedar (1897) I.L.R. 25 Cal. 302; Abdul v. Mohini (1900) 4 C.W.N. 508; The Bengal Tenancy Act, 1885, sec.157.
18. Prohlad v. Kedar (1897) I.L.R.25 Cal.302 at 305; Abdul v. Mohini (1900) 4 C.W.N. 508 at 511.
19. Abdul v. Mohini (1900) 4 C.W.N. 508 at 511; Abdul v. Rajendra (1909) 13 C.W.N. 635 at 637.
20. Taran v. Ganendra (1911) 16 C.W.N. 235 at 236.

in respect of such land.[21]

When a raiyat encroached upon a portion of the land of another tenant of his own landlord, the landlord was entitled to get additional rent from him, provided he proved that he had already granted a reduction of rent to the tenant to the extent of his loss due to the encroachment by the raiyat.[22]

When a raiyat made an encroachment upon the lands of a third person, a prima facie presumption might arise that the encroachment was made for the landlord's benefit[23] and in consequence he might be liable to fresh assessment,[24] although the presumption could be rebutted by clear proof that he intended to appropriate the lands for his own exclusive benefit.[25] In Nuddyar v. Meajan,[26] Garth C.J., observed:-

"There is no doubt whatever that by the English law, an encroachment made by a tenant upon land adjoining to, or even in the neighbourhood of, his holding, is pre-

---

21. Taran v. Ganendra (1911) 16 C.W.N.235 at 236.
22. The Bengal Tenancy Act, 1885, sec.52, sub-sec.(1B) as amended by sec.4 of the Bengal Tenancy (Amendment) Act, 1940.
23. Nuddyar v. Meajan (1884) I.L.R. 10 Cal.820; Birendra v. Laksmi (1913) 22 C.L.J. 129.
24. Saroj v. Surya, (1935) 40 C.W.N. 121 at 123.
25. Birendra v. Laksmi (1913) 22 C.L.J. 129 at 130.
26. (1884) I.L.R. 10 Cal. 820 at 822.

sumed, in the absence of strong evidence to the contrary, to be made for the benefit of the landlord. And this rule applies to all lands so encroached upon whether the landlord has any interest in it or not. If a tenant, during his tenancy, encroaches upon the land of a third person, and holds it with his own tenure until the expiration of the tenancy, he is considered to have made the encroachment, not for his own benefit, but for that of his landlord; if he has acquired a title against the third person by an adverse possession, he has acquired it for his landlord, and not for himself. It is true, that by the English law, if it could be distinctly proved that the tenant made the encroachment adversely to his landlord, an adverse possession for twelve years might then give the tenant a title by limitation; and probably that would be so in this country."

If a raiyat encroached upon the land of a third person, such person could maintain an action in ejectment against the raiyat within the period of limitation.[27]

---

27. Dad Ali V. Jamiruddin A.I.R. 1934 Cal.715.

With respect to accreted land, it was held under the earlier Regulation[28] that a raiyat was only liable to pay increased rent for alluvion when the landlord's right to claim such increased rent was reserved by agreement or was supported by established usage. But the law was changed by the Bengal Tenancy Act, 1885; there was no such condition in section 52 of that Act, which dealt with alteration of rent on alteration of area. The Rent Law Commission, 1880 thus explained the reason of the change of the earlier law:-

"We have further settled a doubtful question by enacting (section 8) that, in the absence of an express contract to the contrary, every tenure-holder and under tenure-holder shall be liable to pay additional rent for land gained by alluvion, and shall be entitled to abatement of rent for land lost by diluvion. We here follow a principle, recognised by the Government in dealing with the cognate subject of revenue,[29] and in accordance with justice,

---

28. The Bengal Alluvion and Diluvion Regulation XI of 1825, sec. 4, cl.1; Juggut v. Panioty (1866) 6 W.R. (Act X) 48; Gopal v. Kunur (1866) 6 W.R. (Act X) 85; Ramnidhee v. Parbutty (1880) I.L.R. 5 Cal. 823; Shorussoti v. Perbutti (1880) 6 C.L.R. 362; Brajendra v. Woopendra (1882) I.L.R. 8 Cal. 706; Hurro v. Gopee (1882) 10 C.L.R.559.
29. The Bengal Alluvion and Diluvion Act, 1847, sec.5 and 6.

equity and good conscience. We have elsewhere[30] applied the same principle to ryots entitled to hold land at fixed rates. We think it unconscionable that, when the land has ceased to exist, out of which issues the benefit in which landlord and tenant participate, the tenant, in addition to losing his own share of this benefit, should have to make good the landlord's share, thus conferring upon him the advantage of insurance without the payment of a premium. Then, as it is reasonable that he who seeks equity should do equity, it follows that the tenant, who has been relieved from the payment of rent for land which he has ceased to enjoy, should pay rent for additional land added to his enjoyment".[31]

Under the Bengal Tenancy Act, 1885 a raiyat was liable to pay additional rent for excess area acquired by alluvion or otherwise. It was enacted in clause (a) of sub-section (1) of section 52 of the Act that "every tenant shall be liable to pay additional rent for all land proved

---

30. The draft Bill prepared by the Rent Law Commission of 1880, sec. 18.
31. The report of the Rent Law Commission, 1880, para 51.

by measurement to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the tenure or holding of land, which, having previously belonged to the tenure or holding, was lost by diluvion or otherwise without any reduction of the rent being made." But the landlords began to abuse this provision of the law; they claimed additional rent on what was represented as an increase in the area of land but which was, in fact, only the consequence in the change in the standard of measurement and fraudulently adduced misleading evidence in Court in order to cheat the tenants.[32] In this regard Mr.Malley, a distinguished member of the Bengal Civil Service said:[33]

"Settlement operations are now in progress in the district (Rajshahi) and it is hoped that they will be effectual in putting a stop to excessive enhancements of rent which have been made by the zemindars for sometime past. The usual modus operandi is for the zemindars to have the tenant's land measured and to claim that the area has been largely increased, whereas the tenants complain,

---

32. Bengal Legislative Assembly Proceedings, 1939, vol.LIV, No.5, p.373.
33. Ibid.,p.374.

often with cause, that the standard of measurement has changed. The bigha in common use about 70 years ago was very much bigger than the standard bigha of the present day. The unit of the latter, as is well known, is the hath[34] of 18 inches whereas the hath of Raja Ramjiban of Nator was about 22 inches long. The substitution of the large bigha for the small bigha has been going on for the last 70 years and is still in progress in some estates. The change in the standard of measurement has not been accompanied by a reduction in the rate per bigha and has consequently involved large enhancement of the raiyat's rent".

In the final report[35] on the survey and settlement operations in the district of Rajshahi it was stated:-

"The most fruitful method of getting illegal enhancement in the district has been through change of the standard of measurement. There are numerous instances. The case of the Brikutsa Estate illustrates the submission of the tenants. About 20 years ago the Brikutsa Estate carried out a survey using the standard bigha in place of

---

34. hath = span.
35. W.H.Nelson, Final Report on the survey and settlement operations in the district of Rajshahi, 1912-1922 (Calcutta, The Bengal Secretariat Book Depot,1922) para 32.

an older and larger bigha. Areas enormously increased and in the new rent-roll which followed, raiyats' rents were correspondingly increased. During settlement operations the matter was examined and the rents were cut down. The landlord then went to the Civil Court to get a declaration that the standard bigha prevailed, but in these cases which the tenants contested he was unsuccessful. He got an ex-parte decree in some uncontested cases. After final publication, he brought cases under section 106 to contest the recorded rent, relying on these ex-parte decrees; but when I declined to accept the decrees as conclusive proof of the standard of measurement and required the landlord to prove that the unit of measurement used in the last survey was the same as that used in the earlier surveys, he withdrew all his cases both under section 106 and section 105".

In the statement of objects and reasons of the Bengal Tenancy (Third Amendment) Bill, 1938 it was stated:[36]

"Section 52 of the Bengal Tenancy Act provides for

---

36. The Calcutta Gazette dated February 2, 1939, Part IVA, p.10.

an increase of rent where it can be proved that there has been an increase of area of a tenure or holding. Government has reason to believe that the provisions of this section have been abused in the following manner. Settlement was made on a cubit, say, of 22 inches in the past. When the record of rights was prepared and the standard cubit of 18 inches was applied in measuring the land, there was an apparent, but not real, increase in the number of bighas in a tenure or holding. With the help of misleading evidence it is often proved that in fact the standard of measurement which had been used at the time of the settlement was an 18 inch cubit. In order to prevent this kind of fraud the present amendment of section 52(1) has been framed. It is not intended that a landlord should be debarred from obtaining additional rent for additional area which in fact exists, owing to gradual encroachment on his khas khamar land or on neighbouring plots."

To prevent this mischief going further section 52 was amended by the Bengal Tenancy (Second Amendment) Act, 1939. The landlord was only entitled to get additional rent for an additional area when he could prove to the satisfaction of the Court that "there has in fact been an increase in the actual area of the tenure or holding since

the rent previously paid was settled".[37] This provision was in accord with the ruling of Rajendra v. Chunder[38] in which Maclean, C.J., observed:-[39]

"A landlord can not successfully claim additional rent under section 52 of the Bengal Tenancy Act, in respect of an excess of area, unless he can satisfy the Court that the rent originally fixed did not cover, and was not intended to cover, such excess of area."

Under the new sub-section (1A) of section 52 of the Act as enacted by the Amending Act of 1939 the landlord could not claim additional rent, if other tenancies in the vicinity, which were settled about the same time when the tenancy in suit was settled and on the same standard of measurement, showed a similar increase in area, as a result of the measurement upon which the landlord relied. Sub-sec (1A) of section 52

---

37. The Bengal Tenancy Act, 1885, sec.52, sub-sec.1, clause (a), Proviso.
38. (1901) 6 C.W.N. 318.
39. Ibid.,p.320.

ran thus:-

"(1A) In determining in a suit under clause (a) of sub-section 1 whether there has been an increase in the actual area of the tenure or holding, the Court shall inquire as to whether the present areas of other tenures or holdings in the vicinity which were settled at or about the same time or on the same standard of measurement as to the tenure or holding in suit, show increases in area compared with the area originally settled similar to that alleged in respect of the tenure or holding in suit: if such increases are found to exist, it shall be presumed (notwithstanding anything contained in any contract) that there has in fact been no increase in the actual area of the tenure or holding in suit since the rent previously paid was settled."

If there was a patta or kabuliat stating the boundaries of the holding at the inception of the tenancy, the landlord could not claim an increase of rent on account of enhancement of the area, if the area of the holding was within such boundaries,[40] unless some contiguous tenant obtained reduction of rent from him on account of an equivalent reduction

---

40. The Bengal Tenancy Act, 1885, sec.52, sub-sec (1B) as introduced by the Bengal Tenancy (Second Amendment) Act, 1939.

of area.[41] But the landlord might get additional rent for additional land found within the defined boundaries if any portion of it, set forth in the kabuliat or the patta, comprised a river or sea or land held khas by the landlord or the Crown.[42] The reason for this exception was that there was just a possibility of the tenant having overstepped his original area and added more land thereto by making acquisitions from the river or sea or from the landlord's or Crown's khas territory.

As to whether an increase in the actual area of the original holding was to be treated as part of the original holding, the Courts drew a distinction between an increase due to accretion and one due to encroachment. In Ahsanullah v.

---

41. The Bengal Tenancy Act, 1885, sec. 52, sub-sec (1B) as introduced by the Bengal Tenancy (Amendment) Act, 1940; The Statement of objects and reasons of the Bengal Tenancy (Third Amendment) Bill of 1939, clause 4 = The Calcutta Gazette dated November 30, 1939, Part IVA, p.215.
42. The Bengal Tenancy Act, 1885, sec.52, sub-sec (1B), proviso, as introduced by the Amending Act of 1939.

Mohini,[43] it was held that, when the area had been enhanced by accretion, the new land was to be regarded as part and parcel of the parent holding and the landlord could not treat it as a separate tenancy. But in Abdul v. Mohini[44] where the tenants obtained possession of certain land by gradual encroachment, it was held that they were to be treated as separate holdings of the tenants, distinct from their tenancies in respect of their original holdings; the lands obtained by such encroachment constituted altogether new holdings and the rents that should be assessed upon them would be new rents in respect of the new holdings. But it would seem that this decision was not in accordance with section 52 of the Act, which only contemplated an increase in rent and not a fresh assessment.

---

43. (1899) I.L.R. 26 Cal. 739 at 744.
44. (1900) 4 C.W.N. 508.

Regarding the rate of assessment of additional rent payable by a raiyat for the additional area, it was held before the Bengal Tenancy Act, 1885 that the landlord was entitled to a fair and equitable rate[45] and the excess land should, as subject to the same lease, be liable to assessment on the same terms as the land to which it originally related.[46] Moreover sub-section (3) of section 52 declared that "in determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity". But the Court was not bound to allow additional rent at the prevailing rate.[47] When in a suit for enhancement of rent under section 52 of the Act, the landlord or tenant was unable to indicate the particular land which was held in excess of that covered by the lease, the rent to be added on account of the excess area might be

---

45. Golam v. Gopal (1868) 9 W.R.65.
46. Ibid.,p.68.
47. Ejel v. Felai (1914) 21 C.L.J.309 at 311; Midnapore Zemindary v. Kristo (1918) 46 I.C.544.

calculated at the average rate of rent paid on all the lands of the holding exclusive of such excess area.[48] This rule was introduced by the Bengal Tenancy (Amendment) Act,1898. The object was thus explained in para 19 and 20 of the statement of objects and reasons of the Bill of 1897:-[49]

"It has been held by some special Judges, interpreting a decision of the High Court[50] that when additional rent is claimed on the ground of excess area, the landlord must indicate the precise plots or pieces of land acquired by the tenant in excess of the original holding, while section 52 itself does not provide for the assessment to rent of excess lands, where there are no rates for lands of a similar description in the vicinity but lump rentals. The section, as amended, indicates that it should not be always necessary, in order to prove excess area, to point out the particular plots that were acquired since the original letting, and provides a rule for assessment of such excess areas, when proved, where there are no rates in force. Where the original letting

---

48. The Bengal Tenancy Act, 1885, sec.52(5).
49. The Calcutta Gazette dated 7th April, 1897, part IV, p.112.
50. Gouri v. Reily (1892) I.L.R. 20 Cal. 579.

was at so much a bigha, and it is shown by measurement by the same standard and under the same conditions that the tenant is holding a larger number of bighas than he is paying rent for, it should not be necessary for the landlord to point out the particular plots which the tenant has acquired in excess of the original area comprised in his holding."

We now pass to reduction of rent for deficiency of area. Section 18 of the Bengal Rent Act, 1859, corresponding to section 19 of the Bengal Act, 1869, provided that "every ryot having a right of occupancy shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by diluvion or otherwise,.....or if the quantity of land held by the ryot has been proved by measurement to be less than the quantity for which rent has been previously paid by him". The Rent Acts thus made provisions for abatement of rent on discovery of a deficiency of area for the benefit of raiyats having occupancy rights. As regards other classes of raiyats, the case-law supplied the lacunae in the statutes. In Sheikh Enayetoolah v. Elaheebuksh[51], it

51. (1864) W.R.Gape vol. (Act X) 42; Raja Kristo v. Abdul (1920) 34 C.L.J. 35.

was held that all tenants were entitled to abatement of rent on the ground of diluvion or deficiency in the area of the tenancy. The Bengal Tenancy Act, 1885 followed the case-law. It was provided in section 52, sub-sec (1), clause (b) of the Act that "every tenant shall be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area". The rule was considered to be founded on the principles of natural justice and equity.[52]

Under the earlier laws and rulings thereon a raiyat could waive his right to abatement of rent for deficiency in area. In Sheikh Enayetoolah v. Elaheebuksh,[53] Peacock, C.J., held: "We think that whether he was a tenant having a right of occupancy or not, he was entitled to abatement for the land washed away, if the terms of the

---

52. Ibid., p.43; Bireswar v. Jagendra, A.I.R. 1929 Cal. 413 at 414.
53. (1864) W.R.Gape vol. (Act X) 42.

kabuliat were not such as to preclude him from claiming that abatement". And such right passed to a purchaser on a sale of the tenant's right.[54] But under the Bengal Tenancy Act, 1885 a raiyat could not be precluded by the terms of his agreement from claiming an abatement of rent, for section 178, sub-section 3, clause (e)[55] provided that "nothing in any contract made between a landlord and a tenant after the passing of this Act shall take away the right of a raiyat to apply for a reduction of rent under section 38 or section 52."[56]

A raiyat could claim abatement of rent on the ground of deficiency of area by diluvion,[57] acquisition of land by Government for public purposes,[58] and dispossession by a person claiming under a title paramount,[59] but an abatement of rent could not be obtained if he could not show that his lessor had no title and that the person who ousted him had a title.[60] In Noorijan v.

---

54. Kali v. Dhananjai (1885) I.L.R. 11 Cal. 625.
55. Before the Bengal Tenancy (Amendment) Act, 1928, it was clause (f); under that Amendment that clause was renumbered as cl. (e).
56. Arunchandra v. Shamsul (1931) I.L.R. 59 Cal. 155 at 167-68 F.B.
57. The Bengal Tenancy Act, 1885, sec. 52(1) (b) and sec. 86A (1); Salimullah v. Kaliprosonna (1913) 33 I.C. 349; Bireswar v. Jagendra A.I.R. 1929 Cal. 413; Rajendra v. Manindra (1916) 24 C.L.J. 162.
58. Deendyal v. Thukroo (1866) 6 W.R. (Act X) 24; Mahtab v. Chittro (1871) 16 W.R. 201; Khagendra v. Sasi A.I.R. 1928 Cal. 406.
59. Gopanand v. Lalla (1869) 12 W.R. 109; Brojonath v. Heera (1868) 10 W.R. 120; Rani v. Ashutosh (1910) 14 C.W.N. clii;

contd. overleaf...

Bimola[61] it was observed that eviction by title paramount was a good defence to a suit for rent and that to constitute such a defence three conditions must be fulfilled: (a) the eviction must be from something actually forming part of the premises demised, (b) the party evicting must have a good title, and (c) the tenant must have quitted against his will. In order to prove eviction within the meaning of this rule, actual physical ouster by a title paramount was not necessary.[62] In Surendra v. Bhudar[63] it was observed that a tenant must protect himself from trespass by strangers; if he failed to do so, he could not claim abatement of rent. In Katyani v. Udoy,[64] their Lordships of the Judicial Committee of the Privy Council observed that a tenant under a perpetual lease must protect himself against illegal encroachments by others on his land, and can not set up such encroachments as a ground for exemption from liability for rent.

---

contd. from previous page....
Surendra v. Dina Nath (1915) I.L.R. 43 Cal.554.

60. Rung v. Lalla (1872) 17 W.R. 386.
61. (1912) 18 C.W.N. 552 at 553; also Surendra v. Dina Nath (1915) I.L.R. '43 Cal.554.
62. Ram v. Joyanti (1926) 44 C.L.J. 449.
63. A.I.R. 1938 Cal. 690 at 692.
64. (1924) I.L.R. 52 Cal. 417 at 422 P.C.= 30 C.W.N.1 P.C.

A raiyat was entitled to abatement of rent in respect of demised lands of which he did not obtain possession.[65] In order to ascertain whether a tenant was entitled to a reduction of rent in consequence of not being put in possession of a portion of the demised property, it was open to the Court to enter upon an enquiry as to what deduction of rent should be made in respect of the deficiency in the area.[66]

A raiyat was also entitled to remission or reduction of rent, if the greater part of the land in his occupation was found not capable of cultivation.[67] Loss of the use of land by a deposit of sand was considered to be something like loss of land by diluvion. In Achala v. Bejoy,[68] it was held that, if a part of the land of a tenancy was covered with sand so as to become useless, the tenant was entitled to a proportionate reduction of rent under section 52(1)(b) of the Bengal Tenancy Act, unless the landlord proved circumstances

---

65. Raj Kumar v. Surendra[illegible] (1921) 27 C.W.N. 166.
66. Beni v. Krishna (1919) 70 I.C. 177.
67. Raghunandan v. Lalit A.I.R. 1934 Pat 542 at 543
68. (1934) 38 C.W.N. 974.

which disentitled the tenant to such reduction. In delivering the Judgment of that case Jack, J., observed:-[69]

"In this case the evidence is that the land on account of which tenant claims abatement is covered with sand, 2 cubits deep. This has been proved by measurement and is not disputed. In these circumstances it must be taken that there has been a reduction of area to the extent covered by sand to a depth of 3 feet and on this ground, the tenant has a right to abatement of rent. The right to abatement where the land is so covered by sand as to be wholly useless is recognized by Sir Barnes Peacock in Syed v. Omrit.[70] The title to the rent is founded on the presumption that the tenant enjoys the use of the land during the contract and if he loses the use of the land owing to no default on his part, it is only reasonable that he should not suffer. The landlord can not complain, for if the land had been in his possession he would have suffered equally. In other cases the law recognises the tenant's right to relief where he has been dispossessed through no fault of his own, for instance, in the case of diluvion, and in

---

69. Ibid., p.975.
70. (1864) W.R. Gape vol. (Act X) 42.

principle there seems to be little to distinguish the cases; if instead of an encroachment by a few inches of water, there is an encroachment (owing to floods or some other causes) of a few feet of sand rendering the land permanently useless for agricultural purposes, is the tenant on the same principle not entitled to an abatement of rent? True, the sand might be removed at considerable expense but the diluvited land might also in many cases be reclaimed and that does not disentitle the tenant to abatement.....Clause (a) of section 52(1) recognises that diluvion is not the only way in which land may be lost to the tenure or holding, and once it has been found in such cases that the use of the land has been as much lost to the tenant as it would have been in the case of the diluvion, it is for the landlord to show that there are circumstances which would disentitle the tenant to obtain relief." Where the whole land was washed away, the tenant was altogether exempted from liability for rent.[71]

The right to abatement of rent which a raiyat obtained by the destruction of the whole or part of his

---

71. Sukhraj v. Ganga (1921) 6 pat.L.J. 665.

holding continued for so long as the land was uncultivable and covered with sand; the rent could not be assessed at a fair rate on the ground that the land could be used for a less profitable purpose.[72]

As to the circumstances in which no abatement of rent could be allowed, it was held that, where a certain quantity of land within definite boundaries was let out and the area was fixed, not by actual measurement but by an approximate estimate and the rent fixed was a lump sum for the land within the defined boundaries, the tenant could not claim reduction of rent, if the area was found to be less than what was mentioned in the kabuliat.[73] No question of abatement could arise where a raiyat knew that the area of land leased to him was less than that mentioned in his patta[74] nor should he be entitled to any abatement if he was in possession of a smaller area of land than that stated through his own fault.[75] It may be mentioned that a raiyat who held diara lands could not, until he acquired an occupancy

---

72. Dukha v. Manabati. A.I.R. 1935 Pat.194.
73. Abdul v. Sheikh, A.I.R. 1925 Cal. 426.
74. Tripp v. Kalee (1864) W.R.Gape vol (Act X) 122 at 123.
75. Seetanath v. Sham (1872) 17 W.R. 418 at 419.

right in his holding by twelve years' continuous possession, demand a reduction of rent under clause (b) of sub-section (1) of section 52 of the Act.[76]

On a claim for abatement of rent on the ground of deficiency in area, the onus was upon the raiyat to prove the extent of the deduction to which he was entitled.[77] But in cases where abatement was claimed on the ground that he was not in possession of the entire land demised, then the onus was on the landlord to prove that he discharged his obligation to put the tenant in possession thereof.[78] Where a tenant claimed abatement on the ground of loss of land in consequence of a deposit of sand, "it is for the landlord to show that there are circumstances which would disentitle the tenant to obtain relief".[79]

Under the earlier laws[80] and rulings thereon an abatement of rent could be sued for[81] or could be claimed

---

76. Srinibash v. Ram (1914) 18 C.W.N. 598.
77. Thomas v. Obhoy (1865) 2 W.R. (Act X) 27 at 28; Chandi v. Hamid A.I.R. 1925 Cal. 1208; Bireswar v. Jogendra A.I.R. 1929 Cal. 413; Arunchandra v. Shamsul (1931) I.L.R. 59 Cal. 155 at 179 F.B.
78. Jogesh v. Emdad (1931) 36 C.W.N. 221 at 229 P.C.
79. Achala v. Bejoy (1934) 38 C.W.N. 974 at 975.
80. The Bengal Rent Act, 1859, sec.18; The Bengal Act, 1869, sec.19.
81. Barry v. Abdool, (1864) W.R.Gape vol (Act X) 64.

by way of set off or as a defence[82] in a suit for rent. A claim for rent being a recurring cause of action, it was held that a tenant was entitled to set up a claim to abatement in a suit for rent of any particular year, notwithstanding that he paid full rent for several previous years.[83] The same seems to be the law under the Bengal Tenancy Act, 1885; a raiyat could either sue for abatement of rent or plead a right to abatement in defence.[84] In Gosta v. Hem[85], Pearson, J., observed:

"The case of Sukraj v. Ganga[86] is directly in point, and upholds the principle that abatement may be claimed in a rent suit. By section 52 of the Act a right is conferred upon the tenant to claim abatement for deficiency in area, and I do not think it is possible to say that anything in the language of section 38 necessarily limits the assertion of that right to the case of a tenant coming forward as plaintiff in a suit instituted specially for the purpose. It is further argued that the matter ought not

---

82. Deendyal v. Thukroo (1866) 6 W.R. (Act X)24; Gour v. Bonomalee (1874) 22 W.R.117.
83. Mahtab v. Chittro (1871) 16 W.R. 201 at 202.
84. Gosta v. Hem, (1924) I.L.R.51 Cal.1022 at 1028 = 29 C.W.N. 124.
85. Ibid.
86. (1921) 6 Pat.L.J.665.

to be entertained as there has been no compliance with the provisions of the Civil Procedure Code in regard to the pleading of set off, but there appears to be no substance in this. The defendant in his statement definitely claimed a specified amount under the heading of abatement, and though it may be that the term 'set off' was not used, that is immaterial so long as the matter has been substantially and unmistakably raised."

In Siba v. Bipradas[87] where, in a suit for rent, a tenant, who did not obtain possession of a portion of the lands let out to him, pleaded that he was not bound to pay rent of that portion, it was held that he was entitled to say so and that it was not necessary for him to bring a separate suit for abatement of rent. A suit under section 38 or 52 of the Bengal Tenancy Act was not necessary, as those sections did not apply where the tenant had never been put into possession by the landlord.

---

87. (1908) 12 C.W.N. 767.

As rent was a recurring cause of action, the question of limitation did not arise in connection with the plea of abatement of rent but the question of acquiescence might arise.[88]

Now let us consider what should be the amount of abatement to which a raiyat was entitled on proof of deficiency in area. Under the earlier laws Phear, J., observed in Brojonath v. Heera[89] that "the only way to arrive at a conclusion as to how much of the whole rent is fairly attributable to this particular portion, is to deal with it as a matter of proportion only; that is, such a sum ought to be deducted from the whole rents as would bear to that whole rent the same proportion as the annual value of the proportion of the land which has disappeared bears to the annual value of the land originally leased". The Bengal Tenancy Act, 1885 followed the same rule as enunciated in that case and provided in sub-

---

88. Ram v. Poolin (1878) 2 C.L.R.5; Ramcharan v. Lucas (1871) 16 W.R. 279 at 280; Raj Kumar v. Surendra (1921) 27 C.W.N. 166; Midnapore Zemindary v. Shib (1927) 105 I.C.741.
89. (1868) 10 W.R. 120 at 121.

sec.4 of sec. 52 of the Act that "the amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure or holding bears to the previous total yearly value thereof or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the tenure or holding." But, in so far as cases of diluvion were concerned, it was not necessary to enquire about the yearly value in view of the new provision in section 86 A(1) of the Act, substituted by the Amendment Act of 1938, which ran thus:-

> "86A. (1) If the lands of a tenure or holding or a portion of such lands are lost by diluvion, the rent of the tenure or holding shall be abated by an amount which bears the same proportion to the rent of the whole tenancy, as the area lost bears to that of the whole tenancy."

Chapter 5

Payment and Suspension of rent

sec.1 Payment of rent

Under the earlier Rent Acts a raiyat either paid rent in instalments or kists according to the terms of the patta(1), where there was one, or according to the established usage of the pargana(2). When he agreed to pay by monthly instalments, he was bound by the terms of the agreement, notwithstanding that the landlord had not strictly enforced his rights previously(3). But under section 53 of the Bengal Tenancy Act, 1885 rent was payable in four equal instalments falling due on the last day of each quarter of the agricultural years, unless there was an agreement or established usage to the contrary. With reference to this section Sir Steuart Bayley in one of the debates in the Legislative Council said:-

"It has been strongly represented to us that the custom of making the rent payable in twelve monthly instalments was frequently a source of great oppression to the raiyat,

---

(1) The Bengal Rent Act, 1859, sec.2; The Bengal Act, 1869, sec.2.
(2) The Bengal Rent Act, 1859, sec.20; The Bengal Act, 1869, sec.21; Chytunno v. Kedarnath (1870) 14 W.R. 99 at 100.
(3) Pearee v. Brojo (1874) 22 W.R. 428.

as it enables his landlord to harass him with an equal number of suits for arrears. On consideration we have deemed it inexpedient to interfere with custom in regard to instalments, but where no custom or contract exists, we have provided for the payment being in four equal quarterly instalments".(4) Inasmuch as rent fell due on the last day of each quarter of the agricultural year, a suit for rent for a quarter instituted before the expiration of that quarter was premature(5). Moreover the landlord could not sue a raiyat for arrears of rent more than once in nine(6) months from the date of the institution of a previous suit(7). The object was "to prevent raiyats being harassed by successive suits for arrears, when by agreement or custom a larger number of instalments than four may be established"(8).

Regarding the time and place for payment of rent it was provided in section 54 of the Original Bengal Tenancy Act, 1885 that "every tenant shall pay each instalment of

---

(4) Extract from the Proceedings of the Council of the Governor General of India dated 27th February, 1885= Selections, p. 443.
(5) Abbas v. Premsukh (1919) 58 I.C. 878.
(6) The word 'nine' was substituted for the word 'three' by section 30 (1) (a) of the Bengal Tenancy (Amendment) Act, 1938 (Bengal Act VI of 1938).
(7) The Bengal Tenancy Act, 1885, sec.147.
(8) The report of the Select Committee on the Bengal Tenancy Bill, dated 12th February, 1885, para 28= Selections, p. 405.

rent before sunset of the day on which it falls due. The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent, be made at the landlord's village office, or at such other convenient place as may be appointed in that behalf by the landlord: Provided that the Local Government may from time to time make rules, either generally or for any specified local area, authorising a tenant to pay his rent by postal money order". The Provincial Government by a resolution dated the 19th March 1891 authorised payment of rent by means of postal money orders in all the districts of Bengal(9). Section 54 of the Act was replaced by a new section by the Bengal Tenancy (Amendment) Act, 1928; the relevant provisions of which ran thus:-

> "54. (1) Every tenant shall pay or tender each instalment of rent before sun-set of the day on which it falls due: Provided that the tenant may pay or tender the rent payable for the year at any time during the year before it falls due.
>
> "(2) The payment or tender of rent may be made at the landlord's village office or at such other convenient place as may be appointed in that behalf by the landlord; or by postal money order in the manner prescribed by the Provincial Government. A tender may also be made by depositing the rent in Court in

---

(9) The Calcutta Gazette dated 25th March 1891, part 1, p. 287.

accordance with the provisions of section 61.

"(3) Where rent is sent by postal money order in the manner prescribed, the Court may presume, until the contrary is proved, that a tender has been made.

"(4) When a landlord accepts rent sent by postal money-order, the fact of this acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the postal money order form".

The object of the Amendment was "to remove the practical difficulties which at present discourage the tenants from paying their rents by money order and cause the landlords to dislike this system of payment"(10).

According to the new section 54, a raiyat was required to pay or tender each instalment of rent before sunset of the day on which it fell due(11). He could only tender the rent; he could not make the landlord accept it when tendered. He might pay or tender at the landlord's village office or at some convenient place appointed by the landlord, or by postal money-order in the manner prescribed by the Provincial Government, or by deposit in Court in accordance with the provisions of section 61(12) of the Act. If there was no village office of the landlord or no convenient place was

---

(10) Notes on clause 36 of the Bill of 1928 = The Calcutta Gazette dated July 12, 1928, part IV, p. 99.
(11) The Bengal Tenancy Act, 1885, sec.54, sub-sec.1.
(12) Infra, p. 399.

appointed for payment, a raiyat had to go to the landlord and pay or tender rent to him as it fell due(13). Any officer of the Zemindar authorised to receive money, who happened to be in the village office, could receive it and give a valid acquittance. But because a man happened to be the manager of the Zemindari, he could not be compelled to take it, wherever he might happen to be and at whatever time or place it might be offered(14).

A raiyat could pay or tender the rent due for the year at any time during the year before it fell due. When rent was paid in advance and thereafter the landlord's interest was sold by auction and purchased by a person with notice of the payment, the auction purchaser was not entitled to the rent already paid in advance, although such rent accrued due after the auction purchase(15).

When rent was sent by postal money-order, the Court might presume, until the contrary was proved, that a tender had been made(16). When the landlord accepted rent sent by postal money-order, the fact of his acceptance was no evidence that he admitted as correct any of the particulars set forth in the postal money-order form(17).

---

(13) Fakir v. W.C. Bonnerji (1900) 4 C.W.N. 324; Ranee Shurut v. Collector of Mymensingh (1866) 5 W.R. (Act X) 69.
(14) Sati Prasad v. Monmotha (1913) 18 C.W.N. 84 at 85-86.
(15) Ram v. Rao Jogendra (1872) 18 W.R. 328.
(16) The Bengal Tenancy Act, 1885, sec.54, sub-sec 3.
(17) The Bengal Tenancy Act, 1885, sec 54, sub-sec. 4; Proviso to section 64A, as introduced by the Bengal Tenancy (Amendment) Act, 1928.

A valid tender discharged a raiyat from his liability for interest, costs and damages[18]. A tender to be valid and operative had to fulfil certain conditions:- It had to be unconditional, or at all events, free from any condition to which the creditor might rightfully object[19], perfect and complete, i.e. it had to include the entire amount due as rent and interest[20]. It had to be made at the proper time and place[21], and be 'kept good', that is to say that the party making the tender had always to be ready to fulfil the obligation, whenever called upon[22]. A tender had to be made in the currency of the land, for a tender by a cheque was not a legal tender[23], though the landlord might accept the cheque and waive his objection as to the legality of the tender. He was deemed to have waived his objection if he rejected a cheque offered to him on the ground that the amount was insufficient or any other ground, which did not involve an objection to the legality of the tender in point of quality[24].

---

(18) Jagat v. Nabagopal (1907) I.L.R. 34 Cal. 305 at 322; Kripa v. Annanda (1907) I.L.R. 35 Cal. 34 F.B; The Bengal Tenancy Act, 1885, sec. 64A.
(19) Beharilal v. Nasimannessa A.I.R. 1923 Cal. 527 at 531; Narain v. Abinash (1922) 27 C.W.N. 299 at 304 P.C.
(20) Ibid; Durga v. Rajendra (1913) I.L.R. 41 Cal. 493 at 513 P.C.; Abbas v. Premsukh (1919) 58 I.C. 878; Beharilal v. Nasimannessa, A.I.R. 1923 Cal. 527 at 530.
(21) The Bengal Tenancy Act, 1885, sec. 54, sub-sec. 2, cl.(i)
(22) Rakhal v. Baikuntha (1928) 32 C.W.N. 1082; Kripa v. Annanda (1907) I.L.R. 35 Cal. 34 F.B.
(23) Jagat v. Nabagopal (1907) I.L.R. 34 Cal. 305 at 319.
(24) Ibid.

On the question whether a tender, in order to be valid and operative, had to be followed by a deposit in Court, it was held in the Full Bench decision in Kripa v. Annanda[25], that it was not necessary to deposit the money in Court, even before the institution of a suit by the landlord. But in Rakhal v. Baikuntha[26] it was held that a plea of tender should not be entertained by the Court, unless it was accompanied by a deposit of the amount admitted. In delivering the judgment of that case Suhrawardy and Cammiade, J.J., explained the scope of the Full Bench decision by observing that "that case has no bearing upon the question in controversy in the present case. Before the Full Bench decision it was held that a tender of rent under the Bengal Tenancy Act must be followed by a deposit under section 61 of the Act. The Full Bench disagreed with this view and held that a tender in order to be legal and valid need not be followed by deposit under section 61, Bengal Tenancy Act. But it did not consider the further question as to whether under the law it is necessary, in order to render a tender effective, to deposit the money in Court at the institution of the suit.

---

(25) (1907) I.L.R. 35 Cal. 34 F.B.
(26) (1928) 32 C.W.N. 1082.

In the Full Bench case in fact the money was tendered several times to the plaintiff, his pleader and naib[27] and ultimately, when it was refused, it was deposited in Court before the institution of the suit. On these facts the Court held that it was a valid tender, which was kept good, as shown by the conduct of the tenant and it should stop the running of interest from the date of the tender".

"Apart from the considerations which apply to the present case with reference to the law of tender, there is a particular section in the Bengal Tenancy Act which deals with the procedure to be followed where a tenant in a suit for rent admits a certain amount to be due to the landlord. Section 150 says when a defendant admits that money is due from him to the plaintiff on account of rent but pleads that the amount claimed is in excess of the amount due, the Court shall refuse to take cognisance of the plea, unless the defendant pays into Court the amount so admitted to be due. This provision of the law was not apparently brought to the notice of the Courts below. As in the present case the defendants admitted that the actual rent fixed under the Kabuliat was due from them to the plaintiffs and they not having deposited that amount in Court, the Court ought to have, under the law, refused

---

(27) 'naib' = deputy.

to take cognisance of the plea that the amount claimed was in excess of the amount which was actually due to the landlords. That the law as laid down in section 150, Bengal Tenancy Act is applicable to cases where the defendant admits that money is due from him to the plaintiff on account of rent has been held in several cases(28). The Patna High Court in Maharaja Kesho v. Triloke(29) has taken a wider view of the application of the section. In this view also the defendant's plea of tender must be rejected".

Where a raiyat pleaded tender as a ground for not being saddled with interest, the onus was on him to prove that he made such tender(30).

Rent became due at the last moment of the time allowed to the tenant for payment(31). If no payment was made on or before the specified time, the amount became an arrear of rent(32) which then carried interest. Under the earlier Rent Acts it was provided that "unless otherwise provided by a written agreement" the raiyat was liable to pay on an arrear of rent interest at twelve per centum per annum(33). Section 67 of the original Bengal

---

(28) Banarasi v. Makhan (1903) I.L.R. 30 Cal. 947.
(29) (1924) I.L.R. 4 pat. 304.
(30) Ranee Shuruf v. Collector of Mymensingh, (1866) 5 W.R. (Act X) 69.
(31) Kashikant v. Rohinikant (1880) I.L.R. 6 Cal. 325 at 328.
(32) The Bengal Tenancy Act, 1885, sec. 54, sub-sec. 5.
(33) The Bengal Rent Act, 1859, sec. 20; The Bengal Act, 1869, sec. 21.

Tenancy Act, 1885 provided that "an arrear of rent shall bear simple interest at the rate of twelve per centum per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the institution of the suit". The section was amended by the Western Bengal Tenancy (Amendment) Act, 1907. The object of the change was thus explained by the Select Committee on the Bill:-

"The present clause provides definitely for the levy of interest on arrears of rent before the institution of a suit. This point arose in the course of our discussion of clause 4, regarding the definition of "rent". We find that the framers of the Act of 1885 apparently intended to provide for the levy of interest before the institution of a suit, and that this was definitely allowed by the former Acts. From the wording of section 67, however, it might be inferred that interest could only be levied on arrears in cases where a suit had been instituted, and that any interest, taken before a suit was brought, might be treated as an illegal exaction under section 75. It has been represented that it is a common practice for landlords to take interest on arrears paid without institution of a suit, and that it would be a hardship both to landlords and to tenants to hold that no interest could be charged unless a suit was instituted. We consider that

on the whole it is advisable that the law should contain a definite provision in regard to this matter, more especially as such provision would merely be carrying out the intention of the framers of the Original Act. We also propose that the rate of interest should be altered from twelve per cent to 12½ per cent. The adoption of the latter rate will greatly facilitate calculation, and this is the rate which is allowed by the Cess Act on arrears of cesses payable by tenants to landlords"(34).

The same changes were effected by the Eastern Bengal and Assam (Tenancy) Amendment Act, 1908. After the Amendment in both the provinces, section 67 of the Act stood as follows:-

"67. An arrear of rent shall bear simple interest at the rate of 12½ per centum per annum from the expiration of the quarter of the agricultural year in which the instalment falls due to the date of payment or of the institution of the suit, whichever date is earlier".

The rate of interest was reduced to six and a quarter per centum per annum by the Bengal Tenancy (Amendment) Act, 1938. Under that section whenever there was an arrear of rent, it would carry simple interest at the rate of 6¼ per cent per annum. It was not within the discretion

---

(34) The report of the Select Committee dated 6th March 1907, para 17 = The Calcutta Gazette dated March 9, 1907 Part IV, p. 6.

of the Courts to award or not to award interest or to award a higher or lower rate of interest. But under the earlier Rent Acts it was held that it was in the discretion of the Court to allow interest on arrears of rent(35). If it did award interest, it was not bound to give 12 per cent, which was only fixed as the limit upto which interest might be awarded(36). Under the Bengal Tenancy Act, 1885 when damages were awarded, interest could not be awarded(37). The duty of the Court to award interest or damages on arrears of rent was mandatory; it had to do one or the other(38). The position was the same under the earlier Rent Acts(39). The fact that there was no mention of interest in the Kabuliat would not disentitle a landlord to interest at the rate as provided in the Act(40). And mere non-enforcement by a landlord, even for a series of years, of his right to interest upon arrears of rent did not amount to a waiver of such right(41).

---

(35) Beckwith v. Kishto (1863) Marshall's Reports, 278; Kassee v. Mynuddeen (1864) 1.W.R. 154; Raja v. Zahir (1871) 6 B.L.R. Appendix 119; Maharaja v. Deb Kumari (1871) 7 B.L.R. Appendix 26; Radhika v. Urjoon (1873) 20 W.R. 128.

(36) Maharaja v. Deb Kumari (1871) 7 B.L.R. Appendix 26; Radhika v. Urjoon (1873) 20 W.R. 128.

(37) The Bengal Tenancy Act, 1885, sec. 68, Proviso.

(38) Kandhdeo v. Dewa (1916) 36 I.C. 955 at 957; Kripa v. Annanda (1907) I.L.R. 35 Cal. 34 F.B.

(39) Nobokanth v. Rajah (1864) 1.W.R. 100 at 101.

(40) Bishnu v. Charu, A.I.R. 1930 Cal. 823 at 824.

(41) Ruttykant v. Gungadhur (1862) W.R. Special No. 13 F.B; Johoory v. Buller (1879) I.L.R. 5 Cal. 102; Shyama v. Heras (1898) I.L.R. 26 Cal. 160.

Regarding the time from which the interest was to run, it was provided that arrears of rent payable quarterly should carry interest from the expiration of the quarter of the agricultural year in which the instalment of rent fell due(42). But where rent was payable monthly, it was held by the Judicial Committee of the Privy Council in Hemanta v. Jagadindra(43) that interest should be calculated monthly. In the judgment of this case Lord Macnaghton observed(44):-

"It appears that there are some arrears which have become due since the Bengal Tenancy Act, 1885. The subordinate Court held that interest was to be calculated ..... monthly on the arrears; but the High Court held that under the provisions of that Act, as regards arrears which became due after the Act came into force, the interest should be calculated quarterly. It appears to their Lordships that the High Court was wrong, and that the provision in section 67 of the Act, on which they relied, only applies to cases when the rent is payable quarterly.

---

(42) The Bengal Tenancy Act, 1885, sec. 67.
(43) (1894) I.L.R. 22 Cal. 214.
(44) Ibid, 221.

Here it is not disputed that the rent is payable monthly, and on rent in arrear it appears to their Lordships that interest ought to be calculated monthly".

But in Narendra v. Gorachand[45] it was held that section 67 of the Act laid down the maximum interest that the landlord might realise on arrears of rent. The parties could not defeat this provision by the device of making the rent payable otherwise than quarterly. In that case Rampini and Mookeerjee, J.J., observed[46]:

"It will be observed that their Lordships did not rule that the whole of section 67 is limited in its application to cases where the rent is payable quarterly, although we find that that is the form in which the decision of their Lordships is summarised in the headnote of the case. It appears to us clear that section 67 contains two distinct provisions, namely, one which fixes the rate of interest and the other which defines the time from which the interest is to run. It is this second provision alone which was interpreted by their Lordships; we are unable to hold that their Lordships decided by implication any question as to the effect of the other

---

(45). (1906) I.L.R. 33 Cal. 683.
(46). Ibid, p. 687.

provision of the section regarding which no question did or could arise in the suit before them. We are not prepared to take any view which will nullify the effect of section 178, sub-section 3, clause (h) and enable parties to contract themselves out of the provision of section 67, which limits the interest to simple interest at 12 per. cent. per annum(47) by the device of making the rent payable otherwise than quarterly".

Similarly in Monohar v. Paresh(48), it was held that a stipulation for payment of interest on each monthly instalment from the time it fell due, being in excess of that which was permitted under the law, was illegal and could not be enforced, inasmuch as the landlord was only entitled to the interest secured to him by section 67 of the Act. Rampini J., observed that "according to the terms of this section, whether rent is payable monthly or quarterly, interest only runs from the expiration of the quarter in which the instalment of rent falls due"(49).

Prior to the Bengal Tenancy (Amendment) Act, 1928, a contract entered into by a raiyat, stipulating for a higher rate of interest than that allowed by section 67

---

(47) This rate of interest was reduced to six and a quarter per. cent. per annum by section 19 of the Bengal Tenancy (Amendment) Act, 1938.
(48) (1913) 18 C.L.J. 175.
(49) R.F. Rampini, op.cit., p. 251.

of the Act, was invalid, if it was made after the passing of the Act[50], but such a contract was valid, if it was made before that date[51]; for section 178 (3) (h) laid down that "nothing in any contract made between a landlord and a tenant after the passing of this Act shall affect the provisions of section 67 relating to interest payable on arrears of rent". The Amending Act of 1928 repealed this provision and substituted section 178 (1) (i), which provided that "nothing in any contract between the landlord and the tenant made before or after the passing of this Act shall affect the provisions of section 67 relating to interest payable on arrears of rent". The effect of this change was that a contract entered into by a raiyat, whether before or after the passing of the Act, in contravention of the rate of interest fixed in section 67 of the Act was invalid.

Turning to apportionment of payments, when a raiyat made a payment on account of rent, he might declare the year or the years and instalment to which he wished the payment to be credited, and the landlord was obliged to credit the payment accordingly. If he did not make any such declaration, the payment might be credited to

---

(50) Hari v. Dinu (1911) 14 C.L.J. 170.
(51) Anandamoyee v. Saudamini (1922) 27 C.W.N. 502.

the account of such year and instalment as the landlord thought fit[52]. This rule was based on the general law as provided in the Indian Contract Act[53] that, when the debtor has omitted to intimate and when there are no circumstances indicating to which of several debts a payment is to be applied, the creditor may apply it at his discretion to any debt actually due and payable to him from the debtor[54]. But a landlord receiving a payment of money as rent was not permitted to apply it towards any interest that might then be due; for 'rent' did not necessarily include 'interest'[55]. Where there was nothing to show whether a certain payment was made towards the principal or interest, the Court could take evidence to find out for what purpose the payment was made[56]. In a Patna Case[57], where there was no direction by the tenant for appropriation, the landlord was allowed to appropriate the remittance towards rent and damages due on account of previous arrears. A payment made on the punyaha day[58] was generally made,

---

(52) The Bengal Tenancy Act, 1885, sec. 55; Surja v. Baneswar, (1896) I.L.R. 24 Cal. 251 at 255; Mohim v. Kalitara (1906) 11 C.W.N. 939 at 942; Gopal v. C.K. Nag, A.I.R. 1936 Cal. 375 at 378.
(53) The Indian Contract Act, 1872, sections 59 and 60.
(54) Rameswar v. Mehdi (1889) I.L.R. 26 Cal. 39 at 44 P.C.
(55) Bhagabati v. Basanta (1906) 11 C.W.N. 110 at 111.
(56) Hem v. Purna (1916) I.L.R. 44 Cal. 567.
(57) Mohammad Yusuf v. Ramdhan, A.I.R. 1935 Pat. 524.
(58) "Punyaha day" = The ceremonial opening day of the Zemindari official year for annual settlement of rent. This day was appointed each year by each

(contd. overleaf.)

not on account of a general arrear balance, but on account of a special kist or instalment, that is, the kist of the newly opened year(59).

A raiyat who made a payment on account of rent to his landlord was entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord(60) or his authorised agent(61). The landlord had to prepare and retain a counterfoil of the receipt(62). The Act required the receipt and counterfoil to specify certain prescribed particulars(63). If a receipt did not contain substantially the particulars required, it was presumed, until the contrary was shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given(64). Where a landlord admitted that rent payable by a raiyat to the end of the agricultural year had been paid, the raiyat was entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt, in full discharge of all rent falling due up to the end

---

(contd. from previous page).
Zemindar according to his own convenience and it was not necessarily the same day in every year. (H.C. Sen, op.cit., 429 fn; C.D. Field, Landholding 445, fn. 8.)

(59) Sarojubala v. Saradanath (1918) 23 C.W.N. 336 at 340.
(60) The Bengal Tenancy Act, 1885, sec. 56 (1).
(61) Ibid, sec. 187, sub-sec. 3.
(62) Ibid, sec. 56, sub-sec. 2.
(63) Ibid, sub-sec. 3.
(64) Ibid, sub-sec. 4.

of the year, signed by the landlord[65] or his authorised agent[66]. Where the landlord did not so admit, the raiyat was entitled on paying a fee of four annas, to receive, within three months after the end of the year, a statement of account specifying certain particulars prescribed by the Act[67]. The landlord had to prepare and retain a copy of the statement, containing those particulars[68]. A fine and other penalties could be imposed for withholding receipts and statement of account and failure to keep counterparts[69].

A raiyat could also pay his rent to his landlord indirectly. It was held in Joykooer v. Furlong[70] that payment by a tenant under the landlord's directions to another or for a specified purpose of a sum equivalent to the amount claimed as rent was tantamount to a payment to the landlord himself and was a sufficient answer to the landlord's suit for rent. The Courts also adopted the rule of English Law, that if a tenant makes a payment, which his landlord is bound to make with respect to the demised

---

(65) Ibid, sec. 57, sub-sec. 1.
(66) Ibid, sec. 187, sub-sec. 3.
(67) Ibid, sec. 57, sub-sec. 2.
(68) Ibid, sub-sec. 3.
(69) Ibid, sec. 58.
(70) (1864) W.R. Gape vol. (Act X) 112.

premises, e.g. rates, taxes or rent due to a superior landlord, the payment is in substance a payment to his landlord; in other words, such a payment operates as payment of the rent itself to his landlord direct. In Katie Graham v. Colonial Government(71), Mookerjee, J., said: "Chief Justice Gibbs pointed out that when the tenant is compelled to make a payment which ought to have been made by his landlord, the substance of the matter is that he makes the payment on his behalf; in other words, he makes the payment in the eye of the law to his landlord himself". Payment to one of several joint landlords whose collection was joint was deemed to be payment to all and was a valid discharge(72).

Sec. 2. Deposit of rent.

Under section 4 of the Bengal Rent Act, 1862 and section 46 of the Bengal Act, 1869 a raiyat's right to deposit rent only arose when he tendered the rent to his landlord and the landlord refused to receive it or to grant a receipt for it. Those sections ran as follows:-

---

(71) (1910) 12 C.L.J. 351 at 355.
(72) Oodit v. Hudson (1865) 2 W.R. (Act X) 15; Mookta v. Koylash (1867) 7 W.R. 493 at 495; Ramnath v. Gondee (1868) 10 W.R. 441; the decision to the contrary in Peary v. Modhoji (1912) 17 C.L.J. 372, refers to a mining lease governed by the provisions of the Transfer of Property Act, 1882.

"If any under-tenant or ryot shall, at the Mal Cutcherry for the receipt of rents or other place where the rents of the land or other immoveable property held or cultivated by him are usually payable, tender payment of what he shall consider to be the full amount of rent due from him at the date of the tender to the Zemindar or other person in receipt of the rent of such land; and if the amount so tendered shall not be accepted, and a receipt in full shall not be forthwith granted, it shall be lawful for the under-tenant or ryot, without any suit having been instituted against him, to deposit such amount in the Court having jurisdiction to entertain a suit for such rent, to the credit of the Zemindar or other person aforesaid: and such deposit shall, so far as the under-tenant or ryot, and all persons claiming through or under him, are concerned, in all respects operate as, and have the full effect of, a payment then made by the under-tenant or ryot of the amount deposited to such Zemindar or other person".

The Rent Law Commission, 1880 recommended the recognition in two more classes of cases of the right of a raiyat to deposit the rent in Court. In their report they observed(73):-

"Under the existing law there is only one case in which rent can be deposited, namely, when the tenant has tendered the rent to his landlord and the landlord has refused to receive it. We have retained this and have provided for two other cases - (1) When the rent is payable to coparceners, who have not appointed, and on behalf of whom the District Judge has not appointed, a common manager, and the tenant is unable to obtain their joint receipt; - (2) When in consequence of a disputed

---

(73) The report of the Rent Law Commission, 1880, para. 125.

succession or other cause, the tenant entertains a bona fide doubt as to who is entitled to the rent. We trust that the result of these changes will be, in the first case, to constrain coparceners to make proper arrangements for the collection of their rents; and in the second case, to check the unwholesome practice of litigating questions of disputed title by collateral issues raised in rent suits; and in both cases to save the ryots from much harassment. We are aware that the facility afforded to tenants of depositing their rent in cases of tender made and refused has been abused to a certain extent, rent being too often deposited without any tender having been made, and it being impossible to bring persons, who have made false statements, to punishment in consequence of the very general nature of the allegations inserted in their petitions. To prevent abuse of the law as amended, we have now provided that, in cases of tender, the deposit must be made within ten clear days from the date of the tender; and in other cases, within fifteen clear days from the date on which the rent fell due. The deposit is to be made by presenting a written application and with it a written declaration. In cases of tender this declaration is to set forth the date of such tender and the persons in whose presence it was made. In other cases, it is to set

forth sufficient facts to enable the Revenue Authorities to judge whether the case falls within the provisions of the Act. The amount deposited must be the full amount of rent due upto date, with, in the case of a tender, the interest (if any) due thereupon at the date of tender. The officer in charge is required to give a receipt for the rent so deposited, and this receipt is declared to have the effect of a legal acquittance".

Similarly it was thus stated in the statement of objects and reasons of the Bengal Tenancy Bill, 1883(74):-

"Under the existing law, there is but one case in which a tenant can deposit his rent in a public office, so that the deposit may operate as a payment to his landlord, namely, when he is prepared to declare solemnly that he has tendered the rent to his landlord, and that the landlord has refused to receive it. It has been found that this declaration has become a mere form, and it is thought better to allow the tenant to deposit his rent whenever he has reason to believe that the landlord will not receive it and grant a receipt. It is also thought advisable that a tenant should be allowed to deposit his rent in two other cases, namely:- (1) When it is payable to co-sharers jointly,

---

(74) Paras 80 and 81 = Selections, p. 206.

and he is unable to obtain their joint receipt, and no person has been empowered to receive the rent on their behalf; and (2) when the tenant entertains a bona fide doubt as to who is entitled to receive the rent".

"This extension of the right to deposit rent necessitates our conferring on the officer empowered to receive deposits a certain discretion not allowed by the present law. He is accordingly given by section 104 a discretion to refuse the deposit, if he does not think the circumstances of the case warrant its being made, and he is further given, by section 106, a discretion to pay away the deposit, if he thinks fit, to such one of several rival claimants as may seem to be entitled to it, but subject, of course, to the right of any person actually entitled to it to recover the amount from the person to whom it is so paid. As regards this last point, however, it will be seen that the officer will have power to retain the deposit if he thinks fit, pending the decision of the civil courts as to the person entitled to it; and this latter course is doubtless that which he would adopt in all cases in which there might be any reasonable doubt as to the person entitled".

But the Select Committee did not concur in the view that the Revenue authorities should be given power to receive the rent to be deposited. They preferred that, as

previously, the rent should be deposited in the Civil Court. In their report it was stated(75) as follows:-

"We likewise modified in some particulars the provisions relating to the deposit of rent, butt need only mention the provision that the deposit shall be made in the Court having jurisdiction to entertain a suit for the rent, and the limitation of the second ground on which an application to deposit rent may be made to cases where the tenant has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the landlord will not be willing to receive the rent or grant a receipt".

The circumstances under which a raiyat could deposit the rent in Court were embodied in sub-section (1) of section 61 of the Act which ran as follows:-

"61. (1) In any of the following cases, namely:-
"(a) When a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;
(b) When a tenant bound to pay on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;
(c) When the rent is payable to co-sharers jointly and the tenant is unable to obtain the joint receipt of the co-sharers for the money and no person has been empowered to receive the rent on their behalf; or
(d) When the tenant entertains a bona fide doubt as to who is entitled to receive the rent;

---

(75) The report of the Select Committee dated 12th February 1885, para 31 = Selections, p. 405.

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding an application in writing for permission to deposit in the Court the full amount of the money then due".

But there were conflicting interpretations of the expression "full amount of the money then due" in the concluding portion of section 61 (1) of the Act. In Sirdhar v. Rameswar[76], it was held that the words in sections 61 and 62 of the Act did not refer to the amount of rent justly due and payable but only to such rent as the tenant, at the time of the deposit, considered to be the rent due and payable. In delivering the judgment of that case Patheram C.J. and Ghosh J. observed:-[77]

"The words 'the full amount of the money then due' as they occur in section 61 do not, as we read them, mean anything more than the words 'what he shall consider the amount of rent due from him at the date of the tender to the Zemindar' as they occur in section 46 of the Bengal Act VIII of 1869, which has now been repealed by the Bengal Tenancy Act. The provision entitling a tenant to deposit his rent in Court were introduced for the first time in the year 1862 (Bengal Act VI of 1862), with a view to protect the tenants from harassment by Zemindars, and to save them

---

(76) (1887) I.L.R. 15 Cal. 166.
(77) Ibid, p. 169.

from costs, interest, and damages being awarded against them in a suit by the Zemindar for the rent; and it appears to us that the words in section 61 and section 62 of the Bengal Tenancy Act have no relation whatsoever to the amount of rent justly due or justly payable, but only to such rent as the tenant at the time of the deposit considers to be the rent due and payable".

This view was followed in Sasibhusan v. Umakant[78] in which Breachcroft and Mookerjee, J.J., said[79]:-

"But the provision of section 61 must be taken along with those of section 62. Sub-section (2) of section 62 provides that a receipt given under that section shall operate as an acquittance for the amount of rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if the amount of rent had been received by the landlord or the person entitled to receive it. This provision has obviously an important bearing upon the question raised before us. The legislature has provided that once a receipt has been given by the Court after a deposit has been made, the receipt operates as an

---

(78) (1914) 19 C.W.N. 1143.
(79) Ibid, 1146.

acquittance, for not the whole amount due, but for the amount of rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent has been received by the landlord. The effect clearly is to make the amount deposited operate as a part payment of the sum actually due".

Similarly it was held in Guana v. Gunamani(80) that a deposit made by a tenant under section 61 of the Bengal Tenancy Act of the amount of rent, which he considers bona fide to be due and payable, was a valid deposit under the section, though it fell short of the amount actually due and operates as an acquittance for the amount payable by the tenant and deposited in the same manner and to the same extent as if the amount had been received by the landlord. But a contrary view was taken in Sati Prasad v. Monmotha(81), where it was held that a deposit in Court by a tenant of less than the amount of arrears of rent due was not a valid deposit under section 61 of the Act. In order to remove the difficulties raised by the Courts(82), the legislature,

---

(80) (1927) 105 I.C. 52.
(81) (1913) 18 C.W.N. 84.
(82) Notes on clause [illegible], 40 of the Bengal Tenancy (Amendment) Bill, 1928 = the Calcutta Gazette dated July 12, 1928, Part IV, p. 100.

by the Bengal Tenancy (Amendment) Act, 1928 amended section 61 of the Act so that, to be entitled to the benefit of the section, the raiyat's deposit must be "a sum not less than the amount of the money then due". In consequence, a deposit of rent without interest then due was not a sufficient deposit within the meaning of section 61 of the Act(83). On a valid deposit being made by a raiyat, the Court would give him a receipt for it under the seal of the Court(84). Such a receipt operated as an acquittance for the amount of rent payable by him(85). When he deposited rent in Court and the Court granted him a receipt, the landlord had no right to intervene in the matter. In Sirdhar v. Rameswar(86), Patheram C.J., observed:-

"If a verified application is made to the Court, and if it contains the grounds upon which an application under section 61 is authorised to be made, and if it also contains the particulars which must be mentioned, the Court is bound to receive the rent and give receipt to the tenant. The Court is not authorised at this stage of the

---

(83) Shyam v. Bhanga (1914) 23 I.C. 777; the report of the Rent Law Commission, 1880, para 125.
(84) The Bengal Tenancy Act, 1885, sec. 62, sub-sec. (1); the report of the Rent Law Commission, 1880, para 125.
(85) The Bengal Tenancy Act, 1885, sec. 62, sub-sec. (2); the report of the Rent Law Commission, 1880, para 125.
(86) (1887) I.L.R. 15 Cal. 166.

proceeding, or at any subsequent stage, to enter into a judicial enquiry as to whether sufficient grounds in law exist entitling the tenant to make the deposit..... There is no machinery whatsoever provided for the Court to enter into a judicial enquiry in connection with the matter of the deposit, nor is there any provision entitling the Zemindar to come in, and to be heard, upon the subject".

On the deposit being accepted, notifications of the receipt of the deposit were issued according to the provision of the Act and the Court might pay the amount of the deposit to any person appearing to it to be entitled to the same, or might, if it thought fit, retain the amount pending the decision of a Civil Court as to the person so entitled(87). If no payment was made before the expiration of three years from the date on which a deposit was made, the amount deposited might, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited(88). The landlord could withdraw

---

(87) The Bengal Tenancy Act, 1885, sec. 64, sub-sec. 1.
(88) Ibid, sub-sec. 2.

the money from the Court even after three years. In a Patna case[89] it was held that the period of limitation for three years provided by the Act was not for the purpose of barring the landlord's claim to withdraw the money, but for the purpose of preventing the tenant from withdrawing the money before the expiration of that period. The tenant who deposited rent could not object to the landlord's claim to withdraw the amount even after the expiry of three years from the date of deposit.

"In order to prevent landlords from harassing tenants by means of suits for rent, which the latter have already tendered by money-order or deposited in Court"[90], it was provided in section 64A, inserted by the Bengal Tenancy (Amendment) Act, 1928, that "if a landlord or his agent refuses without reasonable cause to receive payment of rent remitted by postal money-order or deposited in Court, the landlord shall be precluded from recovering by suit interest, costs or damages in respect of the same, and the Court may in addition award to the tenant damages not exceeding 25 per cent on the whole amount claimed by the plaintiff. The plea of the existence of any dispute

---

(89) Janki v. Dwarka A.I.R. 1933 Pat. 219.
(90) Notes on clause 43 of the Bill of 1928 = The Calcutta Gazettee dated July 12, 1928, Part IV, p. 100.

as to the amount of rent or area of land of the tenure or holding shall not be deemed to be a reasonable cause under this section". But when a landlord accepted rent, which had been deposited or remitted by postal money-order, the fact of his acceptance could not be regarded in any way as evidence that he had admitted as correct any of the particulars set forth in the application for permission to deposit the money or in the postal money-order form(91).

Sec. 3. Imposition of abwab

The imposition of abwab upon the Bengal raiyats commenced during the revenue administration of the Moguls in India. "Jafier Khan, who died in 1725, introduced the first subahdari abwab(92), namely khas navisi(93), or a trifling fee to the khalsa(94) officers. His son-in-law and successors, Sujah uddin, introduced four subahdari abwabs. Aliverdi khan succeeded him and added

---

(91) The Bengal Tenancy Act, 1885, Proviso to sec. 64A as introduced by the Amending Act of 1928.

(92) Sir John Shore's Minute dated 18th June 1789, para 34; J.H. Harington, Analysis, vol. III, p. 236 fn; Mr. Grant's Analysis of the Finances of Bengal = Appendix to the Fifth Report from the Select Committee of the House of Commons, 1812; A. Phillips, op.cit., p. 179; Civilian, op.cit., pp. 43, 50. Subahdari abwab = Viceroyal imposts (Sir John Shore's Minute dated 18th June 1789, paras 26 & 33).

(93) 'Khas navisi' = "An arbitrary cess for the payment of the establishment appointed for registering the annual engagements of Zemindars, or others, for the revenue" (Civilian, op.cit., p. 44).

(94) Khalsa = treasury.

three more"[95]. Sir John Shore calculated that their imposition amounted to an increase of about 33 per cent upon the assessment of 1658, while the increase of the Zemindars' exactions from the raiyats could not be less than 50 per cent[96]. Every Zemindar, talukdar, farmer and under-farmer had his own sets of abwabs, and the raiyats had to pay them all[97].

"When the Mogul authorities", observed Field, "desired to levy an additional sum, the usual way of accomplishing this object was not by increasing the tumar or original amount of revenue payable by the Zemindar or farmer, but by imposing a tax for some particular purpose which was levied in a fixed proportion to the original jumma or revenue. The purposes or pretexts for which these miscellaneous taxes or abwabs were imposed were numerous.... The Zemindars in their turn levied from the raiyats all the abwabs that they themselves had to pay, generally contriving to make a profit out of the transaction; and they further imposed additional abwabs of their own devising and for their own benefit.... The cesses levied from the raiyats

---

(95) C.D. Field, Digest, p. 199; C.D. Field, Landholding, pp. 441-42; C.D. Field, Bengal Code, para 68; J.H. Harington, Analysis, vol. II, p. 59 fn; Civilian. op.cit., pp. 50-51; A. Phillips, op.cit., pp. 179-83; Mr. Grant's Analysis of the Finances of Bengal.

(96) Minute of Sir John Shore dated 18th June 1789, para 41; C.D. Field, Digest, p. 199; C.D. Field, Landholding p. 442; C.D. Field, Bengal Code, p. 86 fn. 1; Civilian, op.cit., p. 181.

(97) C.D. Field, Digest, p. 199.

were variously regulated and were generally calculated at so such in the rupee; the first on the original (asil) rent, and subsequent ones on the asil plus the previous cesses"[98]. It was a ready method of increasing the revenue without the trouble of a measurement and assessment and calculation of rates and tables of commutation[99].

"When the East India Company" observed Ghose, J.,[1], "obtained the Dewany of Bengal they found a variety of taxes, called abwabs, mahtuts etc., had been indiscriminately levied in addition to the asul or original ground rent by the Government from the Zemindars, as also by the Zemindars from the raiyats. And from the Reports that were submitted by the officers of the Company, after investigation into the Revenue system, it would appear that in the time of the Emperor Akbar, a tumar jama or standard assessment was fixed upon the principle of division of the gross proceeds between the sovereign and the raiyats in certain proportions. This standard assessment was from time to time augmented. But notwithstanding this standard assessment, various taxes were subsequently imposed upon the raiyats by the farmers

---

(98) C.D. Field, Bengal Code, p. 76, fn. 3; C.D. Field, Landholding, p. 445, fn. 6.
(99) C.D. Field, Digest, p. 199.
(1) Radha v. Bal Kowar (1890) I.L.R. 17 Cal. 726 at 762, F.B.

of land revenue (Zemindars), as also by the subahdars (viceroys) upon these farmers. And these taxes were called abwab jama in contradistinction to the asul jama or original rent, at which the land was supposed to have been rated in the time of Akbar or an ancient rent fixed at some later period. The subahdary abwabs were, it is said, generally levied upon the standard assessment in certain proportions from the Zemindars, and the latter were authorised to collect them from the raiyats in the same proportions; but as a matter of fact, the Zemindars were left to their own discretion and arbitrary will to make any new demands as they pleased, and there was no fixed rule or principle in levying these impositions(2)".

From the beginning of British Rule in Bengal the Legislature was anxious to protect the raiyats from the standing evils of abwab. "In the year 1772 (14th May)", said(3) Ghose J., "a Regulation(4) was passed, whereby it was declared that a settlement should be made for five years; that the farmers should not receive larger rents from the raiyats than the stipulated amount of the pottas;

---

(2) J.H. Harington, Analysis, vol. II, p. 19.
(3) Radha v. Bal Kowar (1890) I.L.R. 17 Cal. 726 at 762 F.B.
(4) Public Regulations for the Settlement and Collection of the Revenue of 14th May 1772 = J.E. Colebrooke, op.cit., p. 190; J.H. Harington, Analysis, vol. II, p. 12.

that the payments made by the farmers to Government should, in like manner, be assessed and established; and that no mahtuts(5) or assessments under the denomination of mangan(6), sood(7), etc., or any other abwab should be imposed upon the raiyats, and those articles of abwab which were of recent establishment should be scrutinised, and such as might be found to be oppressive and pernicious should be abolished, and that all nuzzurs and salamis be totally discontinued(8)".

"In the same year, the Committee of Circuit, while making settlement for five years in some parts of Bengal, found it necessary 'to form an entire new hustabud or explanation of the diverse and complex articles which were to compose the collections', these consisting of the asul or original ground rent and the abwabs. Such abwabs which appeared to be most oppressive were abolished, and the rest were retained, they being considered part of the 'neat rents'. And in order to prevent the farmer from eluding the restriction imposed, the committee prepared forms of pottahs which the farmers were to give to the raiyats, specifying the conditions of the lease and the 'separate heads or articles of the rent'(9)".

---

(5) 'Mahtut' = from matha, the head; capitation taxes. (E.H. Whinfield, op.cit., p. 75).
(6) 'Mangan' = a cess of 30 seers of the produce per plough (Rampini, op.cit., p. 275).
(7) 'Sood' = interest.
(8) Public Regulations for the Settlement and Collection of the Revenue of 14th May 1772, Articles 10-13.
(9) J.H. Harington, Analysis, vol. II, pp. 19, 20.

"Subsequently in the year 1787 (8th June), another Regulation(10) was passed, by the 50th article of which it was declared that, whereas, notwithstanding the orders of Government in 1772 prohibiting the imposition of mahtut or assessment, various taxes had since been imposed, the Collector should be enjoined to enforce that article, and that if any new taxes be imposed, he was to decree to the party injured double the amount extorted".

During the memorable period in which Permanent Settlement was made a stupendous effort was made to check this evil. Lord Cornwallis was convinced of the necessity of Government interference to prevent the imposition and exaction of abwabs by the Zemindars. His Lordship in his celebrated minute(11) said:- "Every begah of land possessed by them (raiyats) must have been cultivated under an express or implied agreement, that a certain sum should be paid for each begah of produce, and no more. Every abwab, or tax, imposed by the Zemindar over and above that sum, is not only a breach of that agreement, but a direct violation of the established laws of the country. The cultivator,

---

(10) General Regulations for the conduct of the Collectors in the Revenue Department of 8th June 1787 = J.E. Colebrooke, op.cit., p. 253; J.H. Harington, Analysis, vol. II, p. 53.

(11) The Governor-General's Minute dated 3rd. February, 1790.

therefore, has in such case an undoubted right to apply to Government for the protection of his property; and Government is at all times bound to afford him redress. I do not hesitate therefore to give it as my opinion, that the Zemindars neither now nor ever, could possess a right to impose taxes or abwabs upon the ryots; and if from the confusions which prevailed towards the close of the Mogul government, or neglect, or want of information, since we have had the possession of the country, new abwabs have been imposed by the Zemindars or farmers; that government has an undoubted right to abolish such as are oppressive, and have never been confirmed by a competent authority; and to establish such regulations as may prevent the practice of like abuses, in future.... Neither is prohibiting the landowner to impose new abwabs or taxes on the lands in cultivation, tantamount to saying to him, that he shall not raise the rents of his estates. The rents of an estate are not to be raised by imposition of new abwabs or taxes on every begah of land in cultivation; on the contrary, they will in the end, be lowered by such impositions; for when the rate of assessment becomes so oppressive as not to leave the ryot a sufficient share of the produce for the maintenance of his family, and the expenses of cultivation, he must at length desert the land.

No Zemindar claims a right to impose new taxes on the land in cultivation; although it is obvious that they have clandestinely levied them, when pressed to answer demands upon themselves, and that these taxes have, from various cases, been perpetuated to the ultimate detriment of the proprietor who imposed them".

Under the administration of Lord Cornwallis it was laid down in section 54 of the Decennial Settlement Regulation VIII of 1793 that all existing abwabs should be consolidated with the asal jama into one specific sum; and section 55 of the same Regulation prohibited the imposition of any new abwab or mathat upon the raiyat upon any pretence whatever upon pain of a penalty of three times the amount imposed for the entire period of the imposition. By section 61, suits brought on kabuliats, wherein the consolidation should appear not to have been made, were to be dismissed with costs. This was the law until the year 1812. Then we have section 3 of Regulation V of the same year, which altered some of the provisions of the Regulation VIII of 1793 but declared that nothing contained should be construed as sanctioning or legalizing the imposition of arbitrary or indefinite cesses, whether under the denomination of abwab, mathat or any other denomination. Then came section 10 of the Bengal Rent

Act, 1859 and section 11 of the Bengal Act, 1869 which provided that under-tenants or raiyats, if any sum was exacted from them in excess of the sum specified in the patta, whether as abwab or on any other pretext, were entitled to recover damages not exceeding double the amount so exacted.

Though the law regarding abwab was considerably clarified in the Regulation of 1793 noted above, the case-law on the subject was not uniform. In Jeeatoollah v. Jugodindra[12], it was held that, if a Zemindar demanded a cess over and above the original rent and the raiyat consented and contracted to pay it, this demand and the old rent formed a new rent lawfully claimable under the contract. In Budhna v. Juggessur[13], it was held that certain payments which were not so much in the nature of cesses as of rent in kind and which were fixed and uniform and had been paid by the raiyat from the beginning according to local custom, were not illegal cesses. In Juggodish v. Turrikoollah[14], it was ruled that parabi[15] might be recovered if expressly reserved in the contract, it being a part of the consideration for which the agreement was

---

(12) (1874) 22 W.R. 12 at 13.
(13) (1875) 22 W.R. 4 at 5.
(14) (1875) 24 W.R. 90.
(15) Parabi = festival cess.

entered into. In Serajgunge Jute Co., v. Torabdee,[16] it was said that where a raiyat had for many years been paying a tallab beshi[17] of two annas in each rupee in addition to the asal jama of his holding and the two payments had been consolidated with the asal jama and the total was entered as one sum in the jamabandi[18] and also in the raiyat's receipts which they failed to produce, it was held that the whole was recoverable. In that case Garth C.J., observed[19]:-

"The provision against arbitrary and indefinite cesses was made in favour of the ryot, but if the ryot, for the purpose of preventing disputes with his landlord and for securing his own interests, thought fit to agree to make a definite payment to his landlord in addition to his asal jumma, the law rather favoured such arrangements and specially provided for their being enforced".

In Mahomed Fayez v. Jamoo[20], it was held that a condition in a lease, that a tenant would pay to the landlord collection charges, could be enforced if the condition was

---

(16) (1876) 25 W.R. 252.
(17) tallab beshi = tallab means on demand; beshi means more; more on demand.
(18) jamabandi = rent-roll.
(19) Serajgunge Jute Co., v. Torabdee (1876) 25 W.R. 252 at 254.
(20) (1882) I.L.R. 8 Cal. 730.

definite and certain in its nature and formed part of the consideration for the lease.

The subject matter came up before the Full Bench in Chultan v. Tilukdari[21] in which it was decided that where it was not actually proved that abwabs were paid or payable before the time of the Permanent Settlement, a landlord was not legally entitled to recover them as against his raiyats, even assuming that by the custom of the estate the raiyats and their ancestors before them paid such abwabs for a great number of years. In that case Garth C.J. said[22]:-

"I consider that the Regulation of 1793, as well as the Rent Law of 1859, intended to put an end to the abwab system, and to render them illegal. It has been argued that to abolish this system is contrary to the wishes of both landlords and ryots, and I believe that to be true. Landlords often find it a convenient means of enhancing their rents in an irregular way; and the ryots, as a rule, would far rather submit to pay abwabs than have their assul rent increased. But the system

---

(21) (1885) I.L.R. 11 Cal. 175, F.B.
(22) Ibid, p. 180.

appears to me to be clearly illegal, and I consider that the Civil Courts should do their best to put an end to it".

That decision of the Full Bench was affirmed on appeal by the Judicial Committee of the Privy Council. In delivering the Judgment Lord Macnaghten observed(23):-

"They are described in the plaint as 'old usual abwabs'; and they are also described as abwabs in the old Zemindari accounts. It seems to their Lordships that the High Court was perfectly right in treating them as abwabs and not as part of the rent. Unquestionably they have been paid for a long time; how long does not appear. They are said to have been paid according to long-standing custom. Whether that means that they were payable at the time of the Permanent Settlement or not is not plain. If they were payable at the time of the Permanent Settlement, they ought to have been consolidated with the rent under section 54 of Regulation VIII of 1793. Not being so consolidated, they cannot now be recovered under section 61 of the Regulation. If they were not payable at the time of the Permanent Settlement, they would come under

---

(23) Tilukdari v. Chultan (1889) I.L.R. 17 Cal. 131 at 136, P.C.

the description of the new abwabs in section 55; and they would be in that case illegal".

Notwithstanding the statutory prohibitions the Zemindars continued to impose abwabs upon the tenants. The subject attracted the attention of the Bengal Government; an enquiry was instituted by Sir George Campbell in 1872 to find out the nature of abwab and the extent to which the evil had gone so that measures might be taken for abolishing them with a strong hand. The result of the very careful enquiries showed that abwabs were of general prevalence all over Bengal and that they had not been diminished since the Permanent Settlement. The report further showed that the Zemindars realized 27 items of abwabs from the raiyats(24).

It may be observed here that such oppression of the tenantry was not unparallel in the history of Europe. Under the feudal system the lord exacted certain claims from the vassal which were similar to certain abwabs imposed upon the Bengal raiyats. These were known as 'aids'. "The Lord", said Field, "was entitled to aids under certain circumstances,- e.g., to ransom his person if he were taken captive; to make

---

(24) The Bengal Administration Report 1872-73, Chapter I, pp. 21-26; Major Baring's speech in the Legislative Council dated 13th March 1883 = Selections pp. 112-13.

his eldest son a knight; to give a marriage portion to his eldest daughter; to fit out an ~~expenditure~~ expedition to the Holyland. The exigencies upon which aids might be demanded were not very well defined and where the lord was powerful, this right was too often exercised unreasonably and oppressively"(25). The learned author elsewhere said that "we find agricultural services varying from trifling burdens ~~of~~ to forced labour and serfdom; and occasionally land was held partly on these services, and partly on rent service rendered in money or in kind. The commonest mechanical arts were carried on by persons, who held lands on condition of working at their craft for their patrons. In fine, the lord depended upon the feudal tenure for the provisions that supplied his table - for the wood that burnt on his hearth - for the labour that cultivated his home farm - for the service of his domestics - for the ministrations of luxury - and even for the enjoyment of vice"(26).

But returning to the situation in Bengal, we find that in 1880 the Government determined to put a stop to the imposition of abwab upon the tenants by legislation. Speaking of the necessity of such legislation Major Baring

---

(25) C.D. Field, Landholding, p. 10; R.H. Hollingbery, The Zemindary Settlement of Bengal (Calcutta, Brown & Company, 1879), vol. 2, pp. 195, 354.
(26) C.D. Field, Landholding, p. 12.

said:-[27] "It will be borne in mind that, as could readily be shown by reference to contemporaneous literature, one of the chief objects of the authors of the Permanent Settlement was to prevent the levy of abwabs, or illegal cesses. Nothing is more clear than that this object has not been attained". To attain the object in view it was provided in section 71, cl. 2 of the draft Bill of the Rent Law Commission, 1880 and section 123 of the Bengal Tenancy Bill, 1883 that "all impositions upon tenants under the denomination of abwab, mahtut or other appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void".

An amendment was proposed in the Legislative Council by Mr. P.M. Mukerji to add the following exception to this section:-

"Exception - Bonus or salami paid to the landlord by the raiyat in consideration of the former allowing the latter to do an act which he is not lawfully entitled to do shall not be deemed an imposition within the meaning of this section"[28].

"The principle of this amendment", said the mover, "if I recollect right, was not objected to by the Select

---

(27) Selections, p. 112.
(28) Ibid, p. 579.

Committee when the question was discussed. Considering the very heavy penalties which the section imposes for the collection of any sum over and above the actual rent, it is, I think, necessary that an exception of this kind should be expressly inserted in the Bill for the purpose of giving protection to the landlord in those cases in which he receives a bonus or salami from the raiyat for allowing him to do what he otherwise would have no lawful power to do; as for instance, when the landlord allows the raiyat to make an excavation and take earth for making bricks. In such cases the salami which the Zemindar gets from the raiyat should be exempted from the operation of this section"(29). In supporting the amendment Mr. S.B.V.N. Mandlik said:- "The Government does get such fees in estates which are not permanently settled in the Bombay Presidency. Perhaps the hon'ble member in charge might reconsider the matter"(30). In reply to the amendment Sir Steuart Bayley said:- "We have considered the matter. We think there is no objection to the principle which the amendment lays down, but we are very much afraid of its practical operation. The substantive law has been kept as it is, and the old rulings will be

---

(29) Ibid.
(30) Ibid, p. 580.

applicable to it. Whatever is not illegal now will not be illegal under this Bill; what is illegal now will continue to be illegal still. We have not ventured to touch the section, and for this reason I think it would be unwise to put in the proposed exception"(31). The amendment was then put to vote and negatived. Finally the Legislature enacted in section 74 of the Bengal Tenancy Act, 1885 that "All impositions upon tenants under the denomination of abwab, mahtut, or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void". Referring to this section their Lordships of the Judicial Committee of the Privy Council said(32):-

"That section has a long legislative history behind it from 1791 to 1885..... the object of the whole series of enactments from the Regulations of 1791 to Act VIII of 1885, was to prevent exactions from tenants beyond the rent specified in their patta, when there was one, and if there was no written engagement, beyond what was the rent actually payable, whether by verbal agreement or by virtue of custom".

---

(31) Ibid.
(32) Rani Chattra Kumari v. W.W. Broucke (1927) 32 C.W.N. 260 at 263, P.C.

To stop the imposition of abwab the legislature not only declared it illegal but also provided in section 75 of the Act, a penalty for exactions by a landlord from a tenant of any sum in excess of the rent payable. That section ran thus:-

"75. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent, (or road cess or public works cess)(33) (or interest)(34) lawfully payable may, (subject to the second proviso to sub-section 2 of section 74)(35) within six months from the date of the exaction, institute a suit to recover from the landlord in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees; or, when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value".

---

(33) The words "or road cess or public work cess" were inserted by section 3 (1) of the Bengal Tenancy (Amendment) Act, 1919 (Bengal Act III of 1919).

(34) The words "or interest" were inserted for Western Bengal by section 17 of the Western Bengal Tenancy (Amendment) Act, 1907 and for Eastern Bengal, by section 17 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908.

(35) The words and figures with bracket were inserted by section 3 (2) of the Bengal Tenancy (Amendment) Act, 1919: section 74 (2) ran thus:- "All impositions upon tenants of road cess or public works cess, or of both, -
(a) in excess of the rent amount fixed by clause (2) of section 41 of the Cess Act, 1880, or
(b) on any scale in excess of that required by clause (3) of that section,
levied in addition to the actual rent, shall be illegal, and all stipulations and reservations for payment of any such excess contained in any contract made between a landlord and a tenant on or after the 13th day of October, 1880, shall be void:
Provided that nothing in this sub-section shall affect the terms of a written contract registered before the commencement of the Bengal Tenancy
(contd. overleaf).

In the year 1938, the legislature introduced a new section 74A by the Bengal Tenancy (Amendment Act) of that year, providing a fine for realization of abwab; the new section made realization of abwab an offence punishable in a Criminal Court. It ran as follows:-

"74A. (1) If a landlord or his agent realises from a tenant any imposition declared under sub-section (1) of Section 74 to be illegal, such landlord or agent, as the case may be, shall be liable to the same fine, to be imposed in the same manner, as in sub-section (3) of section 58 and the provisions of sub-section (4), (7) and (8) of the said section relating to inquiry, fine and procedure shall, mutatis mutandis and so far as may be, apply to proceedings under this section".

"(2) An appeal shall lie to the District Judge against an order imposing a fine under this section, and the order passed by the District Judge on such appeal shall be final".

"(3) The imposition of a fine on a landlord or landlord's agent under this section shall not operate as a bar to the institution of a suit under section 75".

Sub-section (1) speaks of "landlord or agent", but the landlord and his agent could both be fined if they were found to be guilty of realising an illegal imposition. But if the landlord could prove that the agent realised the amount on his own responsibility, without any authority

---

(contd. from previous page)
(35) (Amendment) Act, 1919:

Provided also that, subject to the provisions of section 72 of the contract Act, 1872, no suit shall lie for the recovery of anything paid before the commencement of the Bengal Tenancy (Amendment) Act, 1919, on account of the impositions referred to in sub-section (2)".

from the landlord, he could be exempted from liability(36).

Now we pass to the questions what was and what was not an abwab. We have seen above that section 74 of the Act declared that all impositions in excess of the actual rent would be illegal. The question, therefore, whether a particular sum claimed was an abwab or not would primarily turn upon the meaning of the words "actual rent"(37). Rent was defined(38) in the Act as "whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant". In Rani Chattra Kumari v. W.W. Broucke(39), their Lordships of the Judicial Committee of the Privy Council observed that "the words 'actual rent' in section 74 cannot be taken to mean either a fair and equitable rent or rent at customary or pargana rates". After the passing of the Bengal Tenancy Act, 1885, there was a Full Bench decision in Radha v. Balkowar(40) where the question was whether certain cesses designated as sarak,(41), batta,(42) kharach,(43), neg(44) were realizable from the tenant. The findings were that the rent was Rs. 18-10-6, that the

---

(36) Manasha v. Jalkadar (1942) 46 C.W.N. 887.
(37) Rani Chattra Kumari v. W.W. Broucke, (1927) 32 C.W.N. 260, P.C.
(38) The Bengal Tenancy Act, 1885, sec. 3 (13); This definition was numbered as clause (5) originally.
(39) (1927) 32 C.W.N. 260 at 264, P.C.
(40) (1890) I.L.R. 17 Cal. 726 F.B.
(41) 'sarak' = village path; A cess for the maintenance of village path was known as sarak (Radha v. Balkowar (1890) I.L.R. 17 Cal. 726 at 727 F.B.).

(contd. overleaf).

difference between the rental and Rs. 22-2-0 which was claimed by the landlord was made up of those items, and they had been realized for a long time with the rent without specification in the rent receipts. It was argued that the landlord was entitled to recover at the rate of Rs.22-2as, though the rent was Rs.18-10-6 only, the balance being made up of items which were neither uncertain nor arbitrary and which the tenant had agreed to pay as part of the consideration for his holding the land. This argument received support from the case of Pudmanund v. Baijnath(45) which, according to the referring Judges, had put a wrong interpretation upon the Full Bench decision in Chultan v. Tilukdari(46). When the Full Bench case of Radha v. Balkowar(47) was heard, Petheram C.J., was of opinion that Pudmanund v. Baijnath(48) must be held to have been overruled by the decision of the Judicial Committee in Tilukdari v. Chultan(49). In that case the learned Chief Justice observed that "nothing could be recovered for the

---

(contd. from previous page).
(42) 'batta' = The difference between the sicca rupee and the Company's rupee (Ibid, p. 727).
(43) 'kharach' = an expense without any specification of its nature. (Ibid).
(44) 'neg' = fee for the putwari (Ibid, p. 728).
(45) (1888) I.L.R. 15 Cal. 828.
(46) (1885) I.L.R. 11 Cal. 175, F.B.
(47) (1890) I.L.R. 17 Cal. 726 F.B.
(48) (1888) I.L.R. 15 Cal. 828.
(49) (1889) I.L.R. 17 Cal. 131 P.C.

occupation of the land, except one sum which must include everything which was payable for such occupation arrived at either by agreement or by some judicial determination between the parties and that any contract, whether express or implied, to pay anything beyond that sum, under any name whatever, for or in respect of the occupation of the land, could not be enforced". But the opinion expressed by the learned Chief Justice was not followed in several cases(50).

In Radha v. Golak,(51), where a fixed sum mentioned in a lease as payable annually for collection charges which together with the rent was described as the jama, the total being referred to as the rent, it was held that it was not to be regarded as abwab but was in reality a part of the rent and recoverable as such. In that case Maclean, C.J., observed: "To my mind, each of these cases depends upon its own particular circumstances and we must look at the contract to see whether the payment which the tenant agrees to make is, in reality, part of the rent as opposed to what is known as the abwab". The learned Chief Justice proceeded

---

(50) Mathura v. Tota (1912) I.L.R. 40 Cal. 806 = 16 C.L.J., 296; Kumar v. Eastern Mortgage Agency (1913) 18 C.L.J., 83; Upendra v. Meheraj (1916) 21 C.W.N. 108.

(51) (1904) I.L.R. 31 Cal. 834; also Kumar v. Eastern Mortgage Agency (1913) 18 C.L.J., 83; Fazal v. Sukor (1913) 19 C.L.J., 333; Upendra v. Mehraj (1916) 21 C.W.N. 108; Abdul v. Prasanna (1924) 85 I.C. 770; Nalini v. Ali (1924) I.L.R. 51 Cal. 643; Manager Murshidabad Estate v. Hira (1936) 41 C.W.N. 88 = A.I.R. 1937 Cal. 51.

to say:- "It seems to me that, upon the proper construction of the document, we must take this sum of Rs.38-4, described as collection charges, as forming part of the consideration for the lease, and as forming, in fact, part of the rent. If that be so, it is not an abwab and is a part of the rent".

In Mathura v. Tota(52) Mookerjee and Halmwood J.J., observed:-

"Whether the sum claimed by the plaintiff (landlord) is or is not, an illegal cess, must depend upon the construction of the contract before the Court. If, upon a fair interpretation of the terms of the contract, the sum claimed can be deemed part of the actual rent, the tenant is bound to pay it; if on the other hand the sum claimed can only be regarded as an imposition in addition to the actual rent, the stipulation for its payment is void". That ruling was also followed in Bejoy v. Krishna(53) where Sanderson C.J., observed:-

"The rule that has been followed in this Court is that each case must depend upon the proper construction of the contract before the Court and if upon a fair interpretation of the contract it can be seen that a particular sum

---

(52) (1912) I.L.R. 40 Cal. 806 at 810; followed in Kalar v. Mathura (1913) 25 I.C. 547; K.C. Dey v. Hira Bewa, A.I.R. 1937 Cal. 51.

(53) (1917) 21 C.W.N. 959; followed in Jogesh v. Sharfaddin (1927) 32 C.W.N. 81; Rudreshwari v. Dhana (1919) 52 I.C. 119.

is specified in the contract or agreed to be paid as the lawful consideration for the use and occupation of the land, i.e., if it is really part of the rent although not described as such, the landlord can recover it". Similarly in Rani Chattra Kumari v. W.W. Broucke(54), their Lordships of the Judicial Committee ruled that "in each case it has to be ascertained whether the sum claimed is really part of the rent agreed upon to be paid as consideration for the lease".

From the principles to be gathered from the cases mentioned above we may say that the question what was or was not abwab was a question of fact to be decided in each particular case(55). If the particular sum specified in the lease or agreed to be paid was the lawful consideration for the use and occupation of the land, that is to say, if it was a part of the rent, although not described as such, the landlord would be entitled to recover the same, and the whole question in any case was whether the items claimed were really part of the rent, which was the

---

(54) (1927) 32 C.W.N. 260 P.C. followed in Abdul Gani v. Angri, A.I.R. 1930 Cal. 205.

(55) Pudmanund v. Baijnath (1888) I.L.R. 15 Cal. 828; Radha v. Golak (1904) I.L.R. 31 Cal. 834 at 836; Rani Chattra Kumari v. W.W. Broucke (1927) 32 C.W.N. 260 at 263 P.C; Abdul Gani v. Angri A.I.R. 1930 Cal. 205.

consideration for the letting out of the lands[56]. This again depends upon the construction of the contract before the Court. If upon a fair interpretation of the terms of the contract the sum claimed could be deemed part of the actual rent, the tenant was bound to pay it; if on the other hand, the sum claimed could only be regarded as an imposition in addition to the actual rent, the stipulation for its payment was void[57].

Sec. 4. Suspension of rent.

"The doctrine of suspension of rent", observed Mukerji, J., "means that the landlord may be penalised for a wilfully wrongful or tortious act of his own by which he prevents a tenant from being in quiet and peaceful enjoyment of the premises demised to the latter. The doctrine is a relic of feudal times and the reasons for the rule have been variously stated to be that the landlord ought not to be encouraged to injure his tenant, whom by the policy of the feudal law he is bound to protect, that he cannot be permitted to apportion his own wrong, and that because by

---

(56) Kumar v. Eastern Mortgage Agency (1913) 18 C.L.J. 83.
(57) Radha v. Golak (1904) I.L.R. 31 Cal. 834 at 837; Mathura v. Tota (1912) 16 C.L.J. 296 = I.L.R. 40 Cal. 806; Upendra v. Meheraj (1916) 21 C.W.N. 108; Bejoy v. Krishna (1917) 21 C.W.N. 959; K.C. Dey v. Hira Bewa A.I.R. 1937 Cal. 51.

the demise every part of the demise is equally chargeable with the whole rent, the lessor cannot by his own act discharge any part from the burden during the continuance of the contract"(58).

The law of suspension of rent may be discussed under two heads: (a) failure to deliver possession of the property to the tenant by the landlord and (b) subsequent dispossession of the tenant from the land by the landlord.

Dealing with the failure to deliver possession of the property, a landlord was bound to put his tenant in possession of the whole of the property demised. If he failed to deliver possession of the whole property, he could not recover rent(59). There is no doubt on this point. But in case of failure to give possession of a portion of the land demised, the decisions were not uniform. In Saroda v. Manmatha,(60), where a tenant was not put in possession of a portion of the demised land but at first paid the full rent agreed to in the lease, it was held,

---

(58) Sakhisona v. Prankrishna, A.I.R. 1933 Cal. 566 at 567.

(59) Surendra v. Bhudar, A.I.R. 1938 Cal. 690; Shama v. Taki (1901) 5 C.W.N. 816; Bullen v. Lalit (1869) 3 B.L.R. Appendix, 119; Hurish v. Mohinee (1868) 9 .W.R. 582.

(60) (1914) 19 C.W.N. 870, following Annanda v. Mathura (1909) 13 C.W.N. 702.

in a suit for recovery of arrears of rent by the landlord, that the tenant could not claim total suspension of rent but only an abatement of rent. In Manindra v. Narendra,(61), the landlord, having let out a portion of the land to one person, let it out again with other lands to another person. As he failed to deliver to the latter possession of the portion leased to the former, it was held that the entire rent should be suspended, the reason, as observed by Fletcher J., being that "the landlord having failed to perform the duty he had undertaken, the rent ought to be suspended"(62). In Narendra v. Manindra,(63), the lessee was already in possession (though wrongful) of the major portion of the land demised and took settlement of the entire jote with full knowledge that another portion of it was in the wrongful possession of a third party; it was held that the lessee could not claim suspension of the entire rent in respect of the portion of the jote in his possession, the reason being that it indicated an intention that the liability of the lessee to pay rent in respect of the portion already in his possession did not depend upon the delivery of possession of the other portion, which was

---

(61) (1919) 23 C.W.N. 585.
(62) Ibid, p. 587.
(63) (1922) 26 C.W.N. 826.

in another's possession. The lessor never put any obstruction in the way of the lessee recovering possession and there was no question of mala fides on the part of the lessor.

In this state of the judicial decisions, the case of Katyani v. Udoy[64] came up before the High Court; it appeared that the landlord omitted, from a bona fide mistake, to put the tenant in possession of a portion of the lands leased, which were largely jungle so that little was known about them; the High Court held that the tenant was not entitled to a suspension of rent. That case went up to the Judicial Committee of the Privy Council and their Lordships observed:-

"The doctrine of suspension of rent, where the tenant has not been put in possession of part of the subject leased, has been applied where the rent was a lump rent for the whole land leased, treated as an indivisible subject. It has no application to a case where the stipulated rent is so much per acre or bigha"[65].

The observation of their Lordships was understood in different ways in different cases by the learned Judges of the Calcutta High Court. In the words of their Lordships of the Judicial Committee - "The observations of the Board

---

(64) (1922) I.L.R. 49 Cal. 257.
(65) Katyani v. Udoy (1924) 30 C.W.N. 1 at 5 P.C. = I.L.R. 52 Cal. 417 P.C.

in Katyani's case[65] have only added to the perplexity, since they have in some cases been wrongly taken to lay down that, if the rent is a lump sum rent, then, in all cases of failure to give possession of any part, there must be a suspension of the entire rent"[66]. Referring to the observation in Katyani's case[65] Mukerji J., said that "the result, in my opinion, being that what was meant was that the doctrine has no application to a case where the tenant has not been put in possession of the whole land leased but the stipulated rent is so much per bigha"[67]. In Sourendra v. Kanai[68], where the tenant defendant was not put in possession of a plot which was part of the holding, the case was remanded on appeal after the High Court had laid down the principle that "it is not that in every case of a lump rental and dispossession from a part, the tenant is at liberty to hold the other lands appertaining to the tenancy rent-free for all time to come. The Court should consider whether the landlord's failure to put the tenant in possession of the entire demised area was due to some mistake as to the extent of the boundaries

---

(66) Ram Lal v. Dhirendra (1942) 47 C.W.N. 489 at 495 P.C.
(67) Sakhisona v. Prankrishna, A.I.R. 1933 Cal. 566 at 570.
(68) (1940) 45 C.W.N. 396.

or some other bona fide act. It has further to consider whether the tenancy is indivisible in the sense that the plots are such that dispossession from one plot necessarily interferes with the enjoyment of the rest"(69).

The uncertainty in the case-law was removed by the Privy Council in Ram Lal v. Dhirendra(70) in which it was held that the doctrine of suspension of rent should not be applied in Bengal in cases of failure on the part of the lessor to give possession of a part of the demised land, even when the lessor did not show that he was unable to give possession of the part withheld and even when the rent reserved was a lump sum rent. It was clearly laid down that, owing to the peculiar conditions of the land system in Bengal, in case of failure to deliver possession of a portion of the land demised, the Court should as a rule apportion the rent, instead of decreeing suspension, whether the rent was a lump sum or otherwise. The lessee might pursue other remedies, e.g., damages, specific performance or avoidance of the lease but he had no right to retain and use another's property without making payment therefor.

We shall now deal with the law of suspension of rent in case of dispossession by the landlord. If the lessee was evicted by the lessor from the whole of the

---

(69) Ibid, p. 397.
(70) (1942) 47 C.W.N. 489 P.C.

property demised, the lessee was not liable to pay rent so long as the dispossession continued. The landlord was not only bound to put the tenant in possession but was also bound to maintain the tenant in quiet enjoyment and if he dispossessed the tenant or interfered with the tenant's possession in any way, he could not claim rent(71). This branch of the law is clear. But what rule should apply when a landlord dispossessed a tenant from a part of the land demised or substantially interfered with the enjoyment of the holding, - whether there should be suspension of the entire rent or a proportionate abatement of rent remained a moot point. The Privy Council in Ramlal v. Dhirendra(72) did not touch this branch of the law, so that a difference of opinion prevailed. Their Lordships simply said that "whether it (the doctrine of suspension of rent) should be applied at all to cases of eviction of the lessee by the lessor from a part of the land, and if so, whether it is limited to rents reserved as a lump sum, and whether it is a rigid or discretionary rule - these questions will call for careful review when they are

---

(71) Dhunput v. Mahomed Kazim (1896) I.L.R. 24 Cal. 296; Lalita v. Surnomoyee (1900) 5 C.W.N. 353.
(72) (1942) 47 C.W.N. 489 P.C.

presented by the facts of a particular case"(73).

Under the English Law, where there is an eviction of the tenant by or at the instance or with the connivance of the landlord, it is a settled rule of law that there will be a suspension of the entire rent. On the subject of eviction and apportionment of rent, Gilbert in his book on Rents said as follows(74):-

"But if the lessor takes a lease of part of the land, or enters wrongfully into part, there are variety of opinions whether the entire rent shall not be suspended during the continuance of such lease or tortious entry. Some have held that there should be no apportionment in either case, but that the whole should be suspended; for this reason, I suppose, because, by the demise, every part of the land was equally chargeable with the whole rent; and therefore the lessor shall not by his own act discharge any part from the burden during the continuance of such contract, This, indeed, may be a good reason why the whole rent service shall be suspended if the lord or lessor disseises or ousts his tenant or lessee of any part of the land; because this is a wrongful act to which the

---

(73) Ibid, p. 497.
(74) Quoted in Dhunput v. Mahomed Kazim (1896) I.L.R. 24 Cal. 296 at 302.

tenant consented not, and, if it were not attended with a total suspension of the rent until he makes restitution of the land, it would be in the power of the lord or lessor to resume any part of the land against his own engagement and contract; and so by taking that which lies most commodious for the tenant, render the remainder in effect useless, and put him to expense and trouble to restore himself to such part by course of law. Therefore to prevent these inconveniences, and that no man would be encouraged to injure or disturb his tenant in his possession, when, by the policy of the feudal law, he ought to protect him and defend him, these resolutions have been and so the law is at this day, that such disseisin or tortious entry suspends the whole rent, and the lessee or tenant is discharged from the payment of any part of it till he be restored to the whole possession".

In an English case, Neale v. Mackenzie,(75), a lessee, to whom one hundred acres of land had been demised, found upon his entry that eight of the acres were in the possession of another party under a prior lease from the landlord, so that he was kept out of possession therefrom.

---

(75) (1836) 1 M & W 747 at 763 quoted in Dhunput v. Mohamed Kazim (1896) I.L.R. 24 Cal. 296 at 302.

Notwithstanding this, the landlord distrained the goods of the lessee for the whole rent due upon the lease, and the lessee sued for damages on account of such distraint. In delivering the judgment of the Court, Lord Denman C.J., with reference to the question of apportionment of rent, observed as follows:-

"In the case before the Court, which is not the case of a demise by indenture, the rent is reserved in respect of all the land professed to be demised and to be issuing out of the whole and every part thereof; and as the plaintiff, as to a portion of the land comprised in the demise (which might be great or small as far as the principle is concerned) has taken no interest, and had no enjoyment and is not bound by any estoppel, we are of opinion that the distress made by the defendant is not justifiable, either in respect to the whole rent reserved or any portion of it".

It was laid down in Bacon's Abridgment, Treatise on Rent, that "where a lessor enters forcibly into part of the land, there are variety of opinions whether the entire rent shall not be suspended during the continuance of such tortious entry, and it seems to be the better opinion and the settled law at this day, that the tenant is discharged from the payment of the whole rent till he be restored to the whole possession, that no man may be

encouraged to injure or disturb his tenant in his possession, whom by the policy of the law he ought to protect and defend"(76).

A number of decisions bearing upon the subject were referred to in the judgment in Dhunput v. Mahomed Kazim(77), where, on a consideration of the English authorities quoted above, it was laid down that "where the act of a landlord is not a mere trespass but something of a grave character, interfering substantially with the enjoyment by the tenant of the demised property, the tenant is entitled to a suspension of rent during such interference, even though there may not be actual eviction. If such interference be committed in respect of even a portion of the property, there should be no apportionment of rent where the whole rent is equally chargeable upon every part of the land demised. But if the interference is in respect of only a certain portion of the demised property, the rent for which is separately assessed, there should be apportionment".

In Rasheswari v. Saurendra(78), it was said that "the law will not apportion rent in favour of a wrong-doer and therefore, if the landlord wrongfully dispossesses his tenant of any portion of the demised premises, the rent is

---

(76) Quoted in Gopanund v. Lalla (1869) 12 W.R. 109.
(77) (1896) I.L.R. 24 Cal. 296.
(78) (1909) 11 C.L.J. 601 at 605; Rajani v. Satish (1918) 48 I.C. 699; Godai v. Aminuddin (1913) 18 C.L.J. 509; Ramani v. Hara Chandra, A.I.R. 1923 Cal. 162.

suspended for the whole". In Harro Kumari v. Purna Chandra[79], suspension was allowed when the dispossession was in respect of a part of the land demised, the rent of which was reserved at a certain rate per bigha. That decision was followed in Surendra v. Kali Kanta[80] and Chandra Kanta v. Rama Nath[81]; in both the cases the rental was at a rate per bigha.

In the meantime it was observed in Annanda v. Mathura,[82], that it might be questioned how far the technicalities of English law should be allowed to affect the relations of landlord and tenant in India, but the Court held on the facts that the rule of suspension was inapplicable to the case before them[83] because "all that could be said was that the plaintiff did not give the defendant possession of a quantity of land[84]". In Purna v. Rasik,[85], suspension of rent was ordered, on the ground that the principle was "supported by a long series of decisions, which had been recognized as good law for over forty years and that the rule was based upon weighty reasons and was

---

(79) (1900) I.L.R. 28 Cal. 188.
(80) (1910) 14 C.W.N. ccvii.
(81) (1910) 11 C.L.J. 591.
(82) (1909) 13 C.W.N. 702.
(83) Ibid, p. 707.
(84) Ibid, p. 706.
(85) (1910) 13 C.L.J. 119 at 122.

defensible on principle". In Sarif v. Aftabuddin,(86), the doctrine was applied in the case of a tenancy consisting of sixteen parcels of land, from three of which the tenant had been dispossessed, and it was observed that the reservation in Dhunput's case,(87), that if the dispossession was in respect of only a certain portion of the demised property, the rent for which was separately assessed, there should be an apportionment, could not be defended on principle(88). In Ashutosh v. Joylal(89) the doctrine was applied to a tenancy where rent had been settled at a certain rate per bigha, it being said that "to hold otherwise would be to render absolutely nugatory the rule as to suspension of rent as a punishment for the dispossession by the landlord of the tenant from a portion of the land demised"(90).

In Dwijendra v. Aftabuddin,(91), two clear pronouncements were made: first, "The result is precisely the same whether he (the tenant) is expelled by violence or is obliged from the exigencies of the situation, to submit quietly to the high-handed act of a powerful landlord"(92); and second, "The true position is that the

---

(86) (1910) 13 C.L.J. 115.
(87) (1896) I.L.R. 24 Cal. 296.
(88) Sarif v. Aftabuddin (1910) 13 C.L.J. 115 at 118.
(89) (1912) 18 I.C. 621.
(90) Ibid, p. 622.
(91) (1916) 21 C.W.N. 492.
(92) Ibid, p. 496.

eviction of the tenant, whether from part of the demised premises or from the whole, entails a suspension of the entire rent while the eviction lasts, whether the tenant remains in possession of the residue or not; the tenancy, however, is not thereby terminated nor is the tenant discharged from the performance of his covenants other than payment of rent such as a covenant to repair"(93).

Such were the rulings upto the Katyani's case(94). After that decision there were differences of opinion as to the application of the observation of the Judicial Committee already referred to. To quote Sir George Rankin - "At the present time decisions in Bengal disclose a state of considerable perplexity and difference of opinion as to the application of these doctrines, some distinguishing between cases of eviction and cases of failure to deliver possession, some expressing the view that, though it must work injustice in some cases, the refusal to permit apportionment of rent helps to protect tenants and should be maintained as a dependable rule, others holding with Bartley, J., in the present case, that no such rigid rule can be applied as justice, equity and good conscience in the

---

(93) Ibid, p. 494.
(94) (1924) 30 C.W.N. 1 P.C. = I.L.R. 52 Cal. 417 P.C.

conditions of Bengal"[95]. We shall now refer to some of the cases which were decided after the Katyani's case[96].

Suresh v. Mathura[97] was a case in which it was found that the tenants were dispossessed by the landlord from part of the demised area, the rule of suspension of rent was applied, the reason being that "as the rent is fixed for the whole holding and not at so much per bigha, the landlord is not entitled either to the whole rent or to rent in proportion to the land which remains in the possession of the tenants"[98]. Susil v. Rajani[99] was a case in which the defendants purchased the lands at an auction sale held in execution of a rent decree obtained by the landlords plaintiffs against the original tenants, who held them at a rent of a certain amount per bigha. On attempting to take actual possession, however, the defendants found that a portion of the lands was in the possession of a third person, who held it on a lease from the landlords granted subsequent to the original leases. In a suit for rent by the landlords it was held that the defendants were not entitled

---

(95) Ramlal v. Dhirendra (1942) 47 C.W.N. 489, at 494 P.C.
(96) (1924) 30 C.W.N. 1 P.C.
(97) A.I.R. 1925 Cal. 1187.
(98) Ibid, p. 1189.
(99) (1927) 31 C.W.N. 990.

to an entire suspension of rent but were liable to pay a proportionate rent of the area that might be ascertained to be in their possession. It was observed that in Katyani's case[1] "their Lordships did not lay down that, where the rent is fixed in a lump, there would be suspension of rent on the ground of dispossession of a part of the demised premises by the landlord and there should not be any apportionment in any such case. It was not necessary for their Lordships to express either disapproval or approval of the application of the doctrine of suspension of rent in the cases in which it has been applied, but their Lordships only stated the circumstances in which it has been applied"[2]. In delivering the judgment of that case their Lordships of the High Court sounded a word of caution in applying the doctrine of suspension of rent:-

"The rule that the rent is suspended on account of dispossession of the tenant from a portion of the demised premises is one derived from the English Common Law. An application of this rule to this Country in its rigid form can hardly lead to justice. The origin of the rule in

---

(1) (1924) 30 C.W.N. 1 P.C.
(2) Susil v. Rajani (1927) 31 C.W.N. 990 at 995; Sakhisona v. Prankrishna A.I.R. 1933 Cal. 566 at 570.

England has its historical basis. The application of this rule may be salutary in certain circumstances but it can only be applied in this Country as a rule of equity, justice and good conscience(3). Whatever may be the law in England, I do not think that the technicalities of the English Common Law should be imported in this Country, particularly in the mofussil, irrespective of any consideration whether the application of such rule would meet the ends of justice.... To hold that in every case of dispossession of the tenant from a part, there should be an entire suspension of rent... seems to me hardly consistent with justice. We may apply any rule of English Law as a rule of equity, justice and good conscience with reference to the circumstances of a case, but such a rule must be applied with caution..... I do not see why he (the tenant) should not pay rent for the land, of which he remains in possession. In my judgment the Court should always endeavour to apportion the rent whenever possible and be very careful in applying the rule of suspension of rent, which can only be allowed in exceptional cases having regard to the circumstances of the cases"(4). Similar observations were also made in some other cases(5).

---

(3) Susil v. Rajani (1927) 31 C.W.N. 990 at 992.
(4) Ibid, p. 994.
(5) Jagadish v. Surendra (1935) 40 C.W.N. 166; followed in Sourendra v. Kanai (1940) 45 C.W.N. 396.

In Taraf v. Kunja[6] the finding was that the rent was assessed with reference to the area in the possession of the tenant and the rule of suspension was not allowed. The Court relied on Katyani's case[7] in support of the proposition that the doctrine of suspension of rent was applied where the rent was fixed in a lump for the whole land leased, treated as an indivisible subject and it could not be applied where the rent was to be fixed according to the area in the possession of the tenant. It did not apply to a case where the tenant was liable to pay rent at so much per bigha per year. Such an interpretation was also made in Mahim v. Sheikh Karam Ali[8] and Abhay v. Hem[9]. It was further observed in the last case that the rule of suspension of rent, although it might operate harshly in individual cases, might be universally applied, inasmuch as it was better that there should be some hardship in some cases than that the Courts should abandon the certainty of a definite rule[10].

In Sajjad v. Trailakhya[11] which was a special case, the landlord sued for recovery of rent for the years 1325 to 1328 B.S. at the rate of Rs.18-5-9pies a year.

---

(6) A.I.R. 1926 Cal. 1226.
(7) (1924) 30 C.W.N. 1 P.C.
(8) (1928) 33 C.W.N. 501.
(9) (1929) 33 C.W.N. 715.
(10) Ibid, p. 721.
(11) (1927) 32 C.W.N. 472.

The defence was that the plaintiff had dispossessed the defendants from 5 bighas and 8 kathas[12] of their holding, which consisted of 25 bighas at a rental of Rs.15-6-11 gandas[13] and the defendants were, therefore, entitled to a suspension of the payment of rent. It appeared that, after the final publication of the record of rights, the landlords started a proceeding under the provisions[14] of the Bengal Tenancy Act, 1885 for settlement of rent and the Settlement officer settled at Rs.18-5-9pies as a fair rent of the lands from the beginning of the year 1326 BS. The order of the Revenue officer, which had the force of a decree, showed that the tenants were in possession of only 21 bighas and 5 kathas, and that the fair rent assessed on this area was Rs.18-5-9pies. It was held that the order of the Revenue officer was conclusive between the parties, both as to the area of the holding and the rent of the holding and that so long,as that order stood, the tenants were bound to pay the rent fixed by the Revenue officer in respect of the area found in their possession by him. In other words it was held that the

---

(12) katha = 1/20 th part of a bigha.
(13) ganda = 1/20th part of an anna.
(14) Sec. 105.

effect of the decision was to determine that the defendants were tenants of the plaintiff in respect of only 21 and odd bighas of land, for which they were liable to pay Rs.18-5-9pies as fair and equitable rent. In that case Rankin C.J., observed(15):-

"The doctrine of suspension of rent depends solely upon this that the rent due is an entire sum in respect of the land demised. If, therefore, the tenant is not given occupation of the whole of the land demised, the landlord has no right to the entire rent and, unless he has a right or some equity to an apportionment, he can recover nothing on the contract. But the whole basis of the doctrine is that the rent due is one entire sum.... It appears to me that, unless we are to set aside the Settlement Officer's decision and give no effect to it at all, it must be held that in respect of the 21 bighas it has been found that the fair and equitable rent is Rs.18; in other words, the entirety of the original rent is inconsistent with and has been destroyed by the finding of the Settlement Officer".

In Ebadali v. Fatema(16), which was a case of dispossession by the landlord but the stipulated rent

---

(15) Sajjad v. Trailakhya (1927) 32 C.W.N. 472 at 475.
(16) (1926) 100 I.C. 501.

was at a certain rate per bigha, it was held that the doctrine was not applicable. In Sarat v. Surendra[17] where a tenant in possession was dispossessed by the landlord from a considerable portion of the demised property and where the settlement was for a lump sum of rent, it was held that the tenant was entitled to entire suspension of rent. It was further said that it was not possible to lay down any hard and fast rule as to when suspension of entire rent should be ordered or when only abatement of rent should be allowed, if the tenant was dispossessed from only a portion of the demised properties. Each case had to be decided on its particular facts. But in Sakhisona v. Prankrishna,[18] it was held that "where dispossession or eviction by the landlord is found, no consideration whether the rental is a lump rental or rental at a certain rate per bigha or acre enters into the question. The real test in such cases is:- was it one indivisible tenancy and was there interference by the landlord with the due enjoyment of the premises or any part of them? In deciding on this test one may consider

---

(17) A.I.R. 1928 Cal. 428; also Dhirendra v. Bhabatarini (1928) 33 C.W.N. 367; Jagadish v. Surendra (1935) 40 C.W.N. 166; Sourendra v. Kanai (1940) 45 C.W.N. 396.

(18) A.I.R. 1933 Cal. 566.

whether the tenancy consists of separate mouzahs[19] or parcels of land separately assessed to rent or whether the tenancy is in fact, and not in law only, divisible or indivisible; that where rent is assessed at a rate per bigha the doctrine will apply if it is a case of dispossession or eviction by the landlord; and that Katyani's case[20] should not be interpreted as laying down anything beyond what it actually says".

In a recent decision of the Patna High Court in Tribeni v. Sheo Singh[21], it was held, after reviewing a large number of cases, that, where a landlord wrongfully evicted his tenant from a part of the land demised, the tenant was entitled to suspension of payment of the entire rent till the land was restored to him. There could not be any difference in such a case between land leased at an entire rent and land leased at so much per acre or bigha, and it made no difference whether the rent be payable in cash or in kind. The tenant did not forego the benefit of the doctrine of suspension of rent by reason of the fact that the landlord dispossessing him was only a co-sharer[22].

---

(19) 'mouzah' = village.
(20) (1924) 30 C.W.N. 1 P.C.
(21) A.I.R. 1952 Pat. 325.
(22) Pramatha v. Chandra (1918) 46 I.C. 539.

It is now clear that, in order to apply the rule of suspension, which amounted to a penalty imposed on the landlord for his alleged act or high-handedness, the circumstance of each case must be looked to(23). Some sort of wrongful or tortious act of dispossession on the part of the landlord had to be established(24). In the application of the doctrine on account of eviction, a clear finding on three points was essential:- (a) there had been an eviction, (b) the landlord was a party to the eviction and (c) the act of the landlord was done with the object of depriving the tenant of the peaceful enjoyment of some portion of the demised premises(25). An actual eviction was not necessary for the application of the rule of suspension of entire rent. Where there was substantial interference by the landlord with the tenant's enjoyment of the property, even though eviction was not complete, the tenant was entitled to suspension of rent for the period of interference(26). The law did not require that there should be complete eviction of the tenant in order that he might be exempted from liability to pay rent(27). To

---

(23) Bisseswar v. Kali Charan A.I.R. 1926 Cal. 908; Sarat v. Surendra, A.I.R. 1928 Cal. 428; Jagadish v. Surendra (1935) 40 C.W.N. 166.
(24) Dharani v. Rajani, A.I.R. 1934 Cal. 146.
(25) Tarap v. Kunja, A.I.R. 1926 Cal. 1226.
(26) Jeaullya v. Sukheannessa (1910) 14 C.W.N. 446.
(27) Lalita v. Surnomoyee (1900) 5 C.W.N. 353.

constitute an eviction entailing suspension of rent, it was not necessary that there should be actual physical expulsion by force or violence from part of the premises(28). Any act of a permanent character done by the landlord or his agent, with the intention of depriving the tenant of the enjoyment of the demised premises or any part thereof, would operate as eviction(29). It was an eviction by the landlord entailing suspension if he interfered with the collection of rent by the tenant from the under-tenants(30). In an English case(31) Jervis, C.J., with reference to the question what constituted eviction, expressed as follows:-

"It is extremely difficult at the present day to define with technical accuracy what is an eviction. Latterly, the word has been used to denote that which formerly it was not intended to express. In the language of pleading, the party evicted was said to be expelled, amoved and put out. The word 'eviction' - from evincere, to evict, to dispossess by a judicial course - was formerly

---

(28) Godai v. Aminuddi (1913) 18 C.L.J. 509 at 511.
(29) Dwijendra v. Aftabuddi (1916) 21 C.W.N. 492 at 496; Kamalanand v. Jarao (1912) 17 C.L.J. 96 at 101; Noorjan v. Bimala (1912) 18 C.W.N. 552 at 553; Jogendra v. Mahesh (1928) 32 C.W.N. 559 at 564.
(30) Hoymobutty v. Sree Kishen (1870) 14 W.R. 58; Kristo v. Chunder (1871) 15 W.R. 230; Jeaullya v. Sukheannessa (1910) 14 C.W.N. 446.
(31) Upton v. Townend (1855) 17 C.B. 30 (64), quoted in Dhunput v. Mahomed Kazim (1896) I.L.R. 24 Cal. 296 at 300.

used to denote an expulsion by the assertion of a title paramount, and by process of law. But that sort of eviction is not necessary to constitute a suspension of the rent, because it is now well settled that, if the tenant loses the benefit of the enjoyment of any portion of the demised premises by the act of the landlord, the rent is thereby suspended. The term 'eviction' is now popularly applied to every class of expulsion or amotion. Getting rid thus of the old notion of eviction, I think it may now be taken to mean this - not a mere trespass and nothing more, but something of a grave and permanent character done by the landlord with the intention of depriving the tenant of the enjoyment of the demised premises. If that may in law amount to an eviction, the jury would very naturally cut the knot by finding whether or not the act done by the landlord is of that character and done with that intention".

The onus of proving facts entitling the tenant to a suspension,or an abatement of rent was upon him. The landlord would not be penalised unless a clear case was made out. In case of failure to put the tenant in possession at the inception of the tenancy, it was laid down by the Privy Council in Jogesh v. Emdad(32) that "where there is no

---

(32) (1931) 36 C.W.N. 221 at 229 P.C.

dispute as to the identity of the subjects let, but the tenant denies that he has ever got possession of the subjects, it is for the landlord to prove that he has discharged his obligation to put the tenant in possession before he can enforce the tenant's obligation to pay rent.... The landlord must not only show that the tenant is in possession of the subjects of the lease, but that such possession is attributable to the lease, or might be so". But where a tenant claimed suspension of rent on account of dispossession, it was for him to prove dispossession during the period for which rent was claimed by the landlord. It was not sufficient that in an earlier suit for rent it was found that there was dispossession by the landlord, because there was no presumption that dispossession continued up to the instant suit, nor was there any obligation on the landlord to prove that he restored possession to the tenant(33).

A claim for suspension or apportionment of rent was not lost by prescription, i.e., the tenant was not precluded from setting up the plea of suspension by reason of the fact that the partial dispossession of which he made

---

(33) Satish v. Raja Reshee (1932) 36 C.W.N. 1134.

a grievance lasted for more than twelve years(34). The tenant's right to claim suspension or abatement was also not lost by the principle of constructive res judicata. In Hari Nath v. Kulesh(35) it was observed that where, in a simple suit for rent, the tenant put forward a plea of dispossession and allowed a decree to be passed for the entire rent, it should not be held that he was bound to take this plea of dispossession. If he had not done so, it should not be treated as barred by the doctrine of constructive res judicata in a subsequent suit.

---

(34) Krishna v. Surendra (1931) 36 C.W.N. 72.
(35) A.I.R. 1933 Cal. 793.

CHAPTER 6

Enhancement and reduction of raiyats' rent

Sec.1. Enhancement of rent by suit

The rent of a raiyat at fixed rates could not be enhanced because his rent was fixed in perpetuity.[1] The rent of an occupancy raiyat could be enhanced either by suit[2] or by contract;[3] section 28 of the Bengal Tenancy Act, 1885 expressly declared that it was not possible to enhance the rent of that class of raiyat except in those two cases. The Act made no provision for enhancement of rent by suit in respect of a non-occupancy raiyat.

Dealing now with enhancement of rent of an occupancy raiyat by suit, it was thus enacted in section 17 of the Bengal Rent Act, 1859 and section 18 of the Bengal Act, 1869:-

"No ryot having a right of occupancy shall be liable to an enhancement of the rent previously paid by him, except on some one of the following grounds, namely:-

---

1. The Bengal Rent Act, 1859, sec.3; The Bengal Act, 1869, sec.3; The Bengal Tenancy Act, 1885, sec.18.
2. The Bengal Rent Act, 1859, sec.17; The Bengal Act, 1869, sec.18; The Bengal Tenancy Act, 1885, sec.30.
3. The Bengal Tenancy Act, 1885, sec. 29.

that the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent;

that the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot;

that the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him."

The Rent Law Commission, 1880 regarded the problem of enhancement of rent of an occupancy raiyat as one of great difficulty.[4] In dealing with the problem they considered the variety of circumstances in which raiyats cultivated their land. In their report[5] they observed:-

"The uncertainty of agricultural experience is very great in every country, but probably in no country is it so great as in India. This increases the difficulty of providing against fluctuations of season by average calculations; and the consequence of failure in those calculations is terribly aggravated through

---

4. The report of the Rent Law Commission, 1880, para 37.
5. Ibid., para 49.

the absence of capital, by drawing upon which the agriculturist is in other countries enabled to tide over an abnormal succession of bad years, hoping to replace what is so consumed by increased energy when circumstances are more favourable. The fertility of land depends in India, as in other countries, upon the nature of the soil and subsoil; and there are in these provinces numerous varieties of both, well understood by the ryots. In settlement proceedings all over India, from before Akbar's time down to the present period, we have these varieties mentioned and taken into account. Some soils are cultivated with much less labour than others; and this is a very important consideration, where so much has to be done by manual labour, where the race of cattle which supplements the exertions of man is deficient in muscle and vigor, and where the absence of capital and the nature of the country prevent the introduction and use of more effective agency. The rich alluvial chur yields a bumper crop in return for the mere exertion of sprinkling the seed on its surface; while the stiffer soil of the higher mats,[6]

---

6. 'mat' = a plain, the open cleared space between the belts of trees that generally enclose a village. (Ibid, fn).).

baked during the burning months when the heaven is as brass and the earth as iron, and scarcely moistened by the tardy rains, is with difficulty turned up by the straining oxen and the toiling ploughman to be ready in time for rice seedlings, which one by one have to be planted out through the full expanse of every field....."

After due consideration of those circumstances the commission decided to retain substantially the grounds of enhancement of rent to be found in section 17 of the Bengal Rent Act, 1859 and section 18 of the Bengal Act, 1869. But an attempt was made to make those grounds clearer and more readily intelligible to the parties affected by them.[7] Under those sections of the Rent Acts the word 'rent' meant both a money rent as well as rent in kind. The Commission for the first time proposed to separate the rules of enhancement of money rent from those of rent in kind.[8]

On the basis of the recommendation of the Commission, the law of enhancement of rent by suit was provided in section 30 of the Act which ran as follows:-

---

7. The report of the Rent Law Commission, 1880, para 52.
8. The draft Bill prepared by the Rent Law Commission, 1880, sec.22.

"30. The landlord of a holding held at a money-rent by an occupancy-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds (namely):-

"(a) that the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy-raiyats for land of a similar description and with similar advantages in the same village or in neighbouring villages,[9] and that there is no sufficient reason for his holding at so low a rate;

"(b) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent;

"(c) that the productive powers of the land held by the raiyat have been increased by an improvement effected by, or wholly or partly[10] at the expense of, the landlord during the currency of the present rent; and

"(d) that the productive powers of the land held by the raiyat have been increased by fluvial action.

"Explanation. - "Fluvial action" includes a change in the course of a river rendering irrigation from the river practicable when it was not previously practicable."

The Bengal Government proposed to abolish "the prevailing rate" as referred to in section 30(a) of the Act as being "illogical, unnecessary and mis-

---

9. Clause (a) in section 30 was substituted for the original clause (a) by section 2 of the Bengal Tenancy (Amendment) Act, 1898 (Bengal Act III of 1898). The new clause added only the words "or in neighbouring villages."
10. The words "wholly or partly" were inserted by section 24 of the Bengal Tenancy (Amendment) Act, 1928 (Bengal Act IV of 1928).

chievous".[11] But the Select Committee was unable to accept the proposal of the Bengal Government to abolish the prevailing rate as a ground of enhancement, inasmuch as this had, in one shape or other, been a ground of enhancement ever since the Permanent Settlement, and it was the only means by which a landlord could remedy the effects of fraud or favouritism on the part of his agent or predecessors.[12]

The prevailing rate, however, was retained as a ground of enhancement for what it was worth, though it was fully recognized at the time that in only a few cases would any rate be found to prevail as to justify the requirements of the section. Mitra in his Tegore Law Lectures observed:-

"The prevailing rate of rent paid for lands of a similar description with similar advantages in the places adjacent is, in the present state of things, extremely difficult to determine. Various causes, the principal of which are the landlord's caprice or tyranny and the tenant's weakness, have in many localities

---

11. The report of the Bengal Government dated 15th September, 1884, para 40 = Selections, p.364.
12. The report of the Select Committee dated 12th February, 1885, para 20 = Selections, p.404.

nearly destroyed what one would call the 'customary rate'. The raiyats generally pay at various rates, varying with the power of resistance which each of them possesses. In many instances colourable kabuliats at rates higher than the really prevailing rates come forward in abundance in support of the landlord's cause and the courts of law feel the greatest difficulty in finding out the truth, even if there be a prevailing rate. The determination of the question as to what is the prevailing rate has necessarily induced rulings not quite consistent with each other."[13]

Under the Bengal Rent Act,1859 it was held that the words "prevailing rate" in section 17 meant the rate generally prevalent or the rate paid by the majority of the raiyats in the neighbourhood.[14] It was the rate paid by so large a majority of the same class of tenants for similar lands as would justify one in holding the rate to be the prevailing rate;[15] and not what the Court might consider to be a "fair rate".[16] In Akul v.

13. S.C.Mitra, op.cit.,p.354.
14. Shadhoo v. Ramanoograha (1868) 9 W.R.83; C.D.Field, Digest, Article 43, Explanation 1.
15. Dhunraj v. Ooggur (1871) 15 W.R.2.
16. Pelaram v. Nund Coomar (1866) 6 W.R. (Act X) 45.

Ameenoodeen[17] it was held that if the prevailing rate was higher than the rent paid by the raiyat, though lower than the rate claimed in the plaint to be prevailing rate, the Court ought to give a decree at the actual rate found to be paid by the neighbouring raiyats. It was essential that it should be paid generally; it was not enough that it was paid by a number of witnesses only. In Priag v. Brockman,[18] the evidence of three patwaris, who put in their jamabandis[19] showing the rates paid by a majority of the raiyats, was held to be sufficient to prove the prevailing rate. Generally speaking, the whole tenor of the decisions was to the effect that an average rate was not a prevailing rate. Similarly under the original Bengal Tenancy Act, 1885 it was held[20] that the words "prevailing rate" in section 30(a) meant not the average rate of rent but the rate actually paid and current in the village for land of a

---

17. (1879) 5 C.L.R. 41.
18. (1870) 13 W.R. 346.
19. Jamabandi papers showed the quantity of land held by each cultivator, its different qualities, its rate of rent, the total rent for all the lands in each cultivator's possession and lastly the grand total of all lands of every kind held by him (Aktowli v. Tarak (1912) 17 C.W.N. 774 at 776.
20. Shital v. Prossonnamoyi (1894) I.L.R. 21 Cal. 986.

similar description with similar advantages; in other words, the expression "prevailing rate" should be construed in the same sense in which it had been used in the earlier cases under the Bengal Rent Act, 1859. The absence from the Bengal Tenancy Act, 1885 of any definition of the expression "prevailing rate", combined with the fact that, "in suits and proceedings for enhancement of rent on the ground of the prevailing rate, the Civil Courts and Revenue Officers were bound to confine their enquiries and comparisons of rates to the same village," rendered the original clause (a) ineffective for the purpose of enhancing rents.[21] To remove those difficulties i.e., to enable an easy determination of the prevailing rate in a particular locality, the legislature inserted a definition of the expression "prevailing rate" in sub-section (1) of section 31A by the Bengal Tenancy (Amendment) Act, 1898, which provided as follows:-

---

21. Statement of objects and reasons of the Bengal Tenancy Bill, 1897, para 14 = The Calcutta Gazette of the 7th April, 1897, part IV, p.110.

"31A.(1) In any district or part of a district to which this sub-section is extended by the Provincial Government by notification in the official Gazette, whenever the prevailing rate for any class of land is to be ascertained under section 30 clause (a), by an examination of the rates at which lands of a similar description and with similar advantages are held within any village or villages, the highest of such rates at which, and at rates higher than which, the larger portion of those lands is held, may be taken to be the prevailing rate."

By the same amendment the scope of the enquiry (i.e., the area for comparison of rates) was enlarged by the introduction of the words "or in the neighbouring villages" in clause (a) of section 30 of the Act.

By the introduction of the new section 31A, the legislature abandoned the principle laid down in the rulings of the High Court already referred to the effect that the prevailing rate was that paid by the majority of raiyats in the village and prescribed that the highest of the rates at which and at rates higher than which the major portion of the lands of any area was held might be taken to be the prevailing rate. "This is a new departure", said Rampini, "in two respects, viz, (a) that the prevailing rate is now defined not with reference to the number of the raiyats paying rent, but with reference to the quantity of land for which rent is payable; and (b) that it enables the highest of

the rates in the ascending scale of rates, at which and at rates higher than which the major portion of land of a similar description and with similar advantages in the same village or in neighbouring villages is held, to be taken as the prevailing rate; so that in time all lesser rates may be raised to this rate".[22] The prevailing rate, as defined in section 31A, might be a rate that was paid only by a single field, being the rate at which and above which the larger portion of the land in the area taken for comparison was held. The area and not the number or proportion of the tenants who hold at a given rate, was to be looked to in determining the prevailing rate. To take an extreme case, if the area selected for comparison were 100 bighas, and 50 bighas were held by a single tenant at Rs. 2-8, and 1 bigha at Rs.2, per bigha, while the remaining 49 bighas were held by 40 tenants at Rs. 1-8, still Rs. 2 would be the prevailing rate under section 31A, as the larger portion of the area - 51 bighas - was held at that or a

---

22. R.F.Rampini, op.cit., p.154.

a higher rate.[23]

As the definition of prevailing rate, given in sub-section (1) of section 31A, only applied in those districts to which the Provincial Government had extended the provisions of that sub-section, the rulings in Shital v. Prossonnamoyi[24] and other cases on this subject held good in suits arising in districts to which they had not been extended. In Harihar v. Ajab,[25] it was held that, by enacting section 31A of the Bengal Tenancy Act, the legislature never intended to alter the pre-existing law in districts to which that section had no application. Similarly Coxe J., refused to apply the principle of section 31A to a district where it had not been extended but he observed that "the question of extending it to the district might very well be considered".[26] In a case[27] decided under the Bengal Tenancy Act prior to the amendment of 1898, it was held that, where no prevailing rate could be found and the raiyats, except in a few isolated cases, were holding

---

23. Finucane and Ameer Ali, op.cit., p.195.
24. (1894) I.L.R. 21 Cal. 986.
25. (1913) I.L.R. 45 Cal. 930 at 932-33.
26. Ram v. Maheshwar (1915) 29 I.C. 880 at 881.
27. Alep v. Raghunath (1896) 1 C.W.N. 310 at 312.

similar lands with similar advantages at varying rates of rent, the Court under such circumstances could take the lowest rate as the prevailing rate. In another case[28] the rate paid by the majority of the tenants was accepted as the prevailing rate. The adoption of the lowest rate as the prevailing rate, if the landlord did not object, could not be challenged by the tenant.[29] It was also held in a number of cases that, where there was no prevailing rate, the landlord was not entitled to obtain a decree for enhancement.[30]

The prevailing rate in any local area was a question of fact and depended upon the actual rents existing in that area from time to time; it increased or diminished according to existing circumstances, the process being automatic.[31] Finucane and Ameer Ali observed that "as is well known, each village has lands of various descriptions, with particular names indicative

---

28. Maugni v. Seo Charan (1897) 1 C.W.N. clxxix at clxxx.
29. Lalit v. Hitnarain (1910) 15 C.W.N, lvi, following Alep v. Raghunath (1896) 1 C.W.N. 310.
30. Ram v. Maheshwar (1915) 29 I.C. 880; Radha v. Hari, A.I.R. 1930 Pat. 332 at 334; Kameshwar v. Soney, A.I.R. 1933 Pat. 529.
31. Ramji v. Ram (1923) 75 I.C. 411 at 414.

of their crop-yielding capacities; some lands are better situated than the others. In judging, therefore, of the prevailing rate, the Court or officer called upon to determine the question of enhancement has to bear in mind the question of similarity, both in the character or description of the lands held by the raiyat, and in the relative advantages of the lands. The point for determination is, however, a question of fact, and no definite rule can be laid down with respect to it".[32] In determining the prevailing rate of rent, rent settled in contravention of section 29[33] of the Act could not be taken into consideration.[34] Jenkins, C.J., observed that "if the Court is satisfied that all the rent in a village should be excluded from consideration, because it is fixed in a mode which contravenes the provisions of section 29 of the Bengal Tenancy Act, then an enquiry should be directed which will bring to light the prevailing rate of rent paid by occupancy raiyats for land of a similar description and with similar advantages in neighbouring villages".[35] A

---

32. Finucane and Ameer Ali, op.cit., pp.187-88.
33. Infra, pp.490-92.
34. Nobin v. Kula (1910) 14 C.W.N. 914.
35. Ibid., p.918.

settlement of rent with reference to the prevailing rate was not illegal merely for the reason that it involved an enhancement of more than two annas in the rupee. There was no limit to the amount of enhancement which could be effected on the ground of prevailing rate.[36]

The legislature laid down certain rules as to enhancement of rent to the prevailing rate in section 31 of the Bengal Tenancy Act, 1885. Clause (a) of that section said that in determining what was the prevailing rate, the rates for three consecutive years immediately prior to the institution of the suit must be taken into consideration and no enhancement could be decreed unless there was a substantial difference between the rates paid by the raiyat and the prevailing rate found by the Court. Clause (b) empowered the Court to appoint a Revenue officer as Commissioner to make a local enquiry if it considered it necessary. In Bengal and other places raiyats belonging to the higher castes sometimes claimed to hold land at special rates of rent; often particular families were, as a matter of fact,

---

36. Bhagaban v. Falturam (1916) 32 I.C. 749 at 750.

allowed to hold at favourable rates.[37] So clause (c) declared that in determining the rent payable by a raiyat, his caste should not be taken into consideration, unless it was proved that by reason of local custom, caste did form an element for consideration. When it was found that by local custom any description of raiyats held land at favourable rates of rent, the rate was to be determined in accordance with that custom.[38] Clause (d) laid down that in determining the prevailing rate, the amount of any enhancement, based on a landlord's improvements, should not be taken into consideration. For example, rates might have increased within a certain area in consequence of improvements effected by the landlord; those exceptional rates could not under the law be regarded as a test of the prevailing rate in the or in the neighbouring villages, villages, or be allowed to influence its determination.[39] Clauses (e) and (f) were inserted by the Amending Act of 1898. As the prevailing rate was determined with reference to the rates generally paid by the majority of raiyats, the Court could under clause (e) exclude from its consideration all favourable rates arising from

37. M. Finucane and Ameer Ali, op. cit., p. 197.
38. Ibid., p. 198.
39. Ibid.

caste privileges. If the rent was not separately allocated to the different classes of land comprised in the holding, the Court had the power, under clause (f), of dealing with the area of each class separately and arriving at the total rent to be paid by the raiyats.

As a Revenue Officer might not know the requirements of a Civil Court, it was right and proper that the Court in directing a local investigation should indicate to the officer holding the investigation what it was that the Court precisely required.[40] According to Brij v. Sheo[41] a Commissioner's duties were:- (a) To ascertain what was the prevailing rent, namely, the rent paid by the majority of the tenants for lands of similar description with similar advantages in the village. (b) If by reason of the application of section 29 of the Bengal Tenancy Act, 1885 or the absence of any prevailing rate within the village in which the holdings in suit lay, the rates in the village could not serve as a guide, then to ascertain what was the prevailing rate in

---

40. Nobin v. Kula (1910) 14 C.W.N. 914 at 917.
41. (1916) 39 I.C. 85 at 87.

the neighbouring village or villages. (c) If no one prevailing rate could be found in any village, then to ascertain what was the lowest rate paid by lands of similar description with similar advantages. (d) To ascertain what would be the prevailing rate if section 31(a) of Bengal Tenancy Act was applied to the lands in suit. If the report of the Revenue officer was not satisfactory, the court could direct a further enquiry setting out what further materials were wanted to come to a proper decision.[42]

Before awarding enhancement, the Court should also find that "there is no sufficient reason" shown by the raiyat "for his holding at so low a rate".[43] For example jungle, waste or marshy land might have been let to him for reclamation or bringing under cultivation at specially low rates. It would obviously be unjust and improper that, after he had made the land profitable, the landlord should be allowed to turn round and claim enhancement.[44] Again the raiyat might belong to a class which,

---

42. Pranesh v. Banawarilal (1924) 86 I.C.533.
43. The Bengal Tenancy Act, 1885, sec. 30(a).
44. Chowdhry v. Gour (1865) 2 W.R. (Act X) 40 at 42.

in accordance with local custom, was allowed to hold at favourable rates of rent[45] or he might hold the land at favourable rates in consideration of his growing special crops for the landlord[46] or for rendering certain services. Accordingly when land was let for the purpose of clearing jungle or for other reclamation and on this ground, or any other ground mentioned in the lease, a reduced rent was provided for the first few years after which the rent was to be at a certain rate as the full rent, such rent was not liable to enhancement on the ground of its being below the prevailing rate.[47]

The second ground of enhancement of rent was that "there has been a rise in the average local prices of staple food crops during the currency of the present rent." We have seen above that under the Bengal Rent Act, 1859 and the Bengal Act, 1869, a raiyat's rent was liable to enhancement on the ground of a rise in the value of the produce. Two changes were made under the Bengal Tenancy Act,1885; Firstly the term 'price' which meant the money

---

45. The Bengal Tenancy Act, 1885, sec.31(c).
46. Ibid: sec. 29, Proviso (iii).
47. Huro v. Chundee (1883) I.L.R.9 Cal. 505, following Soorasoonderee v. Golam Ali (1873) 19 W.R. 141 P.C.

which would be paid on sale of the produce was substituted for 'value' which would include things other than money for which it might be exchanged.[48] Secondly the expression "staple food crops" was substituted for 'produce' which would include a variety of things in addition to the staple crop e.g., jute, sugar cane, betel leaf, tobacco which required particular care and skill and involve special expenditure. The selling price of such special crops would not furnish a safe test for judging the ability of a raiyat to pay enhanced rent. So under the Bengal Tenancy Act, 1885, a rise in price, to justify enhancement of rent, must be confined to staple food crops. In this regard the Rent Law Commission, 1880 observed:-[49]

"We think that in regulating enhancement of rent on the ground of rise in prices, account should be taken of the ordinary or staple food crops only. A different rule would tend to discourage the cultivation of new and valuable species of production, and so prevent

---

48. The report of the Rent Law Commission, 1880, para 56.
49. Ibid, para 59.

agricultural improvement. By allowing the Board of Revenue to declare from time to time, what shall be taken to be the staple crops for particular areas, an opportunity will be afforded of making any new crop a staple as soon as its cultivation has been thoroughly and generally established. As to special crop, such as betel-leaf, tobacco, sugar-cane, and such like, we think that, as they are grown only occasionally or in small qualities, and require particular attention and involve special expenditure, they ought not to be considered in settling enhanced rents. We may further observe in support of this view that, in commuting the Tithe into a money payment in England, staple crops only were taken into account, the staples selected being wheat, oats, and barley."

As early as 1792 the Government wrote in the Revenue Despatch of the 12th December of that year:-

"Apprehending that the present great demand for sugar and the consequent rise in the price of it might induce some of the landholders to exact from their <u>ryots</u> an enhancement for the ground appropriated to the cultivation of the cane; and, as such shortsighted policy would

have discouraged the extension of the cultivation of it, and consequently prevented the establishment of a trade in sugar between this country and Europe, we thought it advisable to issue a notification to the landholders, prohibiting any enhancement of the rent of the sugarcane lands, upon the ground of its being repugnant to the usage of the country as well as detrimental to their own interest and that of the State at large".[50]

Finucane and Ameer Ali observed that "under the former law also special crops were not taken into consideration in settling rents, for the exaction of very high rates for fields devoted to special cultivation discouraged and retarded agricultural improvement. The present law has reverted to the policy of the Mahomedan Government, and declared that, in considering the liability of the raiyat to enhancement of rent under clause (b) of section 30, the rise in the average prices of staple food-crops alone should supply the test".[51]

According to the Rent Law Commission,1880, there

---

50. Quoted in the report of the Rent Law Commission, 1880, para, 59.
51. M.Finucane and Ameer Ali, op.cit.p.189.

were two principal causes of increase in prices of agricultural produces. In the first place, even while the relative value of the precious metals which were used for the coinage of a country remained the same, there was a constant tendency for the money-value or price of agricultural produce to rise, as population increased and improvement progressed. A large and expanding export trade had brought the demand of other countries to bear upon prices in addition to the enlarged demand of the province itself. In the second place, the coinage consisted of silver, and the relative value of silver had been gradually decreasing. The price or money-value of produce had therefore risen.[52] The Rent Law Commission recommended that the landlord should have a share in the price due to the above two causes.[53]

The next question is in what proportion the rate of rent should be increased on account of rise in prices of staple food crops. It was laid down in the Great Rent case[54] that the old rent should bear to the enhanced

---

52. The report of the Rent Law Commission 1880, para 56.
53. Ibid.
54. Thakooranee v. Bisheshur (1865) B.L.R. Sup.vol.202 at 229 F.B.

rent the same proportion as the former value of the produce of the soil, calculated on an average of three or five years next before the date of the alleged rise in value, bears to its present value. "The rule of proportion thus enunciated," said Finucane and Ameer Ali, "was vague and indefinite, while the period of time indicated for purposes of comparison was much too short. Nor did the rule take into account any increase in the cost of production".[55] The Bengal Tenancy Act, 1885 removed the defects in the rule by enacting in section 32(b) that "the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison". That proportion had to be worked out with reference to average prices during two decennial periods, the one immediately preceding the institution of the suit and the other any decennial period as it might appear equitable and practicable to take for comparison.[56] In order to avoid the hardship that might arise from an

---

55. M.Finucane and Ameer Ali, op.cit.,p.204.
56. The Bengal Tenancy Act, 1885, sec.32(a).

average of high prices in the later period, it was also provided in the proviso to section 32(b) of the Act that "in calculating this proportion, the average prices during the later period shall be reduced by one-third, of their excess over the average prices during the earlier period." On this point the Select Committee on the Bill said:- "In applying the proportion rule in the case of prices the question of making some deduction to cover the effect of increased prices on the cost of cultivation would receive further consideration. The Bengal Government recommended a deduction of one-half on this account. We recognized the difficulty of making the Courts ascertain the actual cost of production, and as it was necessary to fix an arbitrary limit we have fixed the deduction at one-third as a general rule".[57] If in the opinion of the Court it was not practicable to take the decennial periods, the Court might, in its discretion, substitute any shorter periods therefor.[58] In order to facilitate the comparison of average prices during the

---

57. The report of the Select Committee dated 12th February 1885, para 18 = Selections, p.404.
58. The Bengal Tenancy Act, 1885, sec.32(c); The report of the Select Committee dated 12th February 1885, para 25(a) = Selections, p.404.

decennial periods, provisions were made for preparation of price-lists of the market prices of staple food crops[59] and the Provincial Government was given power by rule to determine what were to be deemed staple food crops in any local area.[60] It was an error of law if a Court omitted to refer to the price-lists in a suit for enhancement of rent brought inter alia on the ground of a rise in the average local prices of staple food crops.[61] It seems that the Court should suo motu refer to the price-lists even when not asked by the parties. In settling the rate of enhancement under section 30(b) of the Act, regard must be had to the nature of the land on which the rent was to be assessed. If it was up-land the prices of the up-land staple crop must be considered, while if it was low land the prices of the low land staple crops must be considered.[62] Where the holding consisted partly of land and partly of a house, it was held in a Patna Case[63] that enhancement was to be limited to land only.

---

59. The Bengal Tenancy Act, 1885, sec.39, sub-sections (1) and (2).
60. Ibid, sub-sec.7.
61. Nobin v. Kula (1910) 14 C.W.N.914.
62. Sajiwan v. Gulab (1916) 35 I.C. 678 at 680.
63. Jeonath v. Bishambhar (1921) 106 I.C.422.

Turning now to the third and fourth grounds of enhancement of rent, we have seen above that under the Rent Acts of 1859 and 1869 enhancement was allowed on the ground of an increase in the "productive powers of the land, otherwise than by the agency and expense of the ryot." This ground of enhancement was sub-divided into two by section 30 of the Bengal Tenancy Act, clause (c) of which dealt with increase of productive powers of the land by the landlord's improvements and clause (d) with such increase by fluvial action. These were the only two cases which, in the opinion of the framers of the Act, created an increase in the productive powers of the land such as would justify an enhancement of rent. "All other cases", said Sir Steuart Bayley, "seem to resolve themselves into cases, such as railways or canals, in which the landlord will get his enhancement by improvement of prices, or else into improvements effected by Government or by the raiyat. In these cases we do not see any just ground for enhancement".[64]

64.
Extract from the Proceedings of the Council of the Governor General of India dated 27th February,1885 = Selections, p.436.

The third ground of enhancement was that "the productive powers of the land held by the raiyat had been increased by an improvement effected by, or wholly or partly at the expense of, the landlord during the currency of the present rent." The words "wholly or partly" were added by the Amending Act of 1928 for the following reason: "It has been considered reasonable that the landlord should be entitled to some enhancement of rent under clause (c) of section 30 when he bears a portion of the cost of the improvement".[65] There was an amendment to omit the word 'partly' which was negatived by the Council. Mr.F.A.Sachse in opposing the amendment on behalf of the Government said:- "The words are put in order to encourage landlords not to oppose schemes promoted by the District Boards under Act VI of 1920 for local drainage or irrigation works. As the law stands the landlords can get no increase of rent as a reward for contributions to which they may have been assessed by the Collector for such schemes".[66]

---

65. Notes on clause 24 of the Bill of 1928 = The Calcutta Gazette dated July 12, 1928, part IV,p.98.
66. Bengal Legislative Council Proceedings, 1928, Vol.XXX, No.2, p.304.

Where an enhancement was claimed on the ground of a landlord's improvement, the Court should not grant an enhancement unless the improvement was registered.[67] In determining the amount of enhancement the Court should take into consideration "(i) the increase in the productive powers of the land caused or likely to be caused by the improvement, (ii) the cost of the improvement, (iii) the cost of the cultivation required for utilising the improvement, and (iv) the existing rent and the ability of the land to bear a higher rent."[68] As regards clauses (ii), (iii) and (iv) Finucane and Ameer Ali observed that "in some cases the cost of making an improvement is trifling; in others, the raiyat may have to incur himself considerable expense in making use of the improvement. Either the one or the other of these circumstances, or both combined, would have an important bearing on the determination of the amount of enhancement. Again, the rent may already be too high; and, inspite of the improvement, the land may not be able to bear an increase in its burden".[69]

---

67. The Bengal Tenancy Act, 1885, sec.33 (1)(a) read with sec. 80.
68. Ibid., sec.33 (1)(b).
69. M. Finucane and Ameer Ali, op.cit.,p.206.

Even when a decree for enhancement on the ground of landlord's improvement was obtained by the landlord, the tenant or his successor-in-interest was entitled to reconsideration of the same in the event of the improvement ceasing to produce the estimated effect,[70] or if the effect was of a prospective character, not producing it at all.[71] The ground for review or reconsideration would be that the improvement did not produce or had not produced the effect estimated in decreeing the enhancement.[72]

In assessing the amount of enhancement claimed on the ground of a landlord's improvement, a sum in addition to the interest payable on the capital spent should be included, for, if only interest was allowed, the landlord's capital would be lost to him after the lapse of a few years.[73] Where a tenant agreed to pay a particular sum as enhanced rent in consideration of improvement, it was held that such sum might be taken, prima facie, as his

---

70. The Bengal Tenancy Act, 1885, sec.33(2).
71. M.Finucane and Ameer Ali, op.cit., p.206.
72. Ibid., p.207.
73. Ganes v. Lachmi (1915) 34 I.C. 783 at 786.

own estimate of what would be a fair rent under 30(c) and the Court might well adopt this as the basis for a decree, at any rate unless the tenant showed that his estimate was erroneous.[74]

Increase in the productive powers of the land due to fluvial action was the fourth ground of enhancement of rent.[75] Fluvial action included a change in the course of a river rendering irrigation from the river practicable when it was not so previously.[76] Where an enhancement was claimed on this ground, the Court could not take into consideration any increase which was merely temporary or casual.[77] Although the Court might enhance the rent to such an amount as it might deem fair and equitable, the amount should in no case give to the landlord more than one-half of the value of the net increase in the produce of the land.[78]

In a suit for enhancement of rent the landlord had first of all to prove the ground or grounds of his right

---

74. Ibid.
75. The Bengal Tenancy Act, 1885, sec.30(d).
76. Ibid, Explanation.
77. Ibid, sec.34(a).
78. Ibid, sec.34(b).

to enhance;[79] when he did that, the onus was on the tenant to resist enhancement on the ground that he was a raiyat at fixed rates.[80]

A decree for enhancement of rent, if passed in a suit instituted in the first eight months of an agricultural year, ordinarily took effect on the commencement of the agricultural year next following; and if passed in a suit instituted in the last four months of the agricultural year, ordinarily took effect on the commencement of the agricultural year next but one following; but the court might fix for special reasons a later date from which any such decree should take effect.[81]

The enhanced rent continued only so long as the improvement subsisted and substantially produced its estimated effect in respect of the holding so that a time might come when the rent would have to be reduced to the original rate. It was open to the tenant to establish that the rent should not be decreed at the enhanced rate, because the improvement either no longer existed or did

---

79. Poolin v. Watson (1868) 9 W.R.190.
80. Gudar v. Brij (1901) 5 C.W.N.880.
81. The Bengal Tenancy Act, 1885, sec.154.

not substantially produce the estimated effect in respect of the holding. It was obviously just that, if the improvement ceased to exist in part only, there should be a corresponding reduction in the enhanced rent.[82]

It is settled that under section 30 of the Bengal Tenancy Act, 1885, a landlord was entitled to an enhancement of rent of an occupancy raiyat by suit on one or more of the four grounds mentioned above. There was no limit as to the amount of enhancement by suit but the court had to look to other provisions of law. The Court could not, in any case, decree an enhancement which was, under the circumstances of the case, unfair or inequitable.[83] The Court could exercise its discretion to refuse to grant any enhancement, if it found that the rent was already too high.[84] In passing the decree for enhancement, the Court might order gradual enhancement extending over a period not exceeding ten years,[85] where it considered that the immediate enforcement of the decree to its full extent would be attended with hardship to the raiyat.[86] A land-

---

82. Ganes, v. Lachmi (1915) 34 I.C.783 at 786.
83. The Bengal Tenancy Act, 1885, sec.35.
84. Hukum v. Jugal, A.I.R.1932 Pat.203.
85. Before the Amending Act of 1928 the period was five years.
86. The Bengal Tenancy Act, 1885, sec.36.

lord could not bring successive enhancement suits. Section 37 declared that when the rent was once enhanced by contract or by suit on the ground that the rent was below the prevailing rate or on the ground of a rise in prices, or when a suit claiming an enhancement on either of those two grounds was dismissed, no further suit for enhancement on those grounds could be entertained within the next fifteen years.

In the interest of the raiyats the legislature suspended the entire provisions relating to enhancement of rent by section 75A inserted in the parent Act by the Amending Act of 1938.

Sec. 2. Enhancement of rent by contract.

Under section 29 of the Bengal Tenancy Act, 1885 the rent of an occupancy raiyat might be enhanced by contract subject to the following conditions:- (a) the contract had to be in writing and registered; (b) the rent could not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the

raiyat; (c) the rent fixed by the contract was not liable to enhancement during a term of fifteen years from the date of the contract. It was further provided in the same section that -

"(i) nothing in clause (a) shall prevent a landlord from receiving rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which rent is claimed.

"(ii) Nothing in clause (b) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement only, so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

"(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable."

The effect of proviso (i) was that where a contract could not be proved because it was not in writing or was not registered, the landlord was not debarred from recovering rent at the rate at which it had been paid continuously for the three years or more immediately preceding the period for which the rent was claimed. That proviso was based on the principle that an oral contract acted upon should be put on the same footing as a contract in writing. It was necessary, however, that the enhanced rent should be actually paid during the three years immediately preceding the period for which the rent was claimed. Thus where rent was enhanced without a registered instrument and the enhanced rent was actually paid from 1314 to 1319 B.S., but not in 1320, it was held[87]

---

87. Janaki v. Enat (1922) 37 C.L.J.489.

that the landlord was not entitled to claim the enhanced rent from 1321 to 1324 B.S.; for section 29 only applied to a case where rent was "actually paid" for a period of three years preceding that for which rent was claimed. But proviso (i) did not control clause (b)[88] or (c).[89] So that payment for three years or for any length of time, at a particular rate, would not entitle the landlord to recover rent enhanced by more than two annas in the rupee or within fifteen years of a previous enhancement.

Proviso (ii) saved contracts to pay rent at enhanced rates by more than two annas in the rupee in consideration of an improvement to be effected by or at the expense of the landlord and to the benefit of which the raiyat would not otherwise be entitled. That proviso was added to encourage improvements, additional rent for improvements being looked upon as interest on the capital spent. The enhanced rate, however, was payable only when the improvement had been effected and only for so long as it existed and substantially produced its estimated

---

88. Bepin v. Krishna (1905) 9 C.W.N. 265 F.B.; Nafar v. Rahaman (1916) 23 C.L.J. 580.
89. M.Finucane and Ameer Ali, op.cit.,p.177.

effect in respect of the holding, except when the raiyat was chargeable with default in respect thereof. In other words, to make the tenant liable for enhanced rent for an improvement, it was essential (a) that it was in respect of his holding; (b) that it was effected by or at the expense of the landlord; (c) that the tenant would not otherwise be entitled to its benefit; (d) that the improvement had actually been carried out; and (e) that the liability would last only for so long as the improvement existed and substantially produced the estimated effect in consideration of which the enhanced rent was contracted for, provided the tenant himself had done nothing to interfere with the improvement.[90] Where the tenant bound himself to pay the enhanced rent in consideration of an improvement, the landlord was not required to prove registration of such improvement.[91]

Proviso (iii) made another exception to the rule limiting enhancements within two annas in the rupee. It sometimes happened in different parts of the country that

---

90. M.Finucane and Ameer Ali, op.cit.,pp.177-78.
91. Madan v. Kali (1937) 42 C.W.N.126.

the raiyats held lands at specially low rates in consideration of their cultivating for the convenience of the landlords a particular crop such as indigo. If the raiyat agreed to pay the enhanced rent in order to be freed from such an obligation, clause (b) would not affect the agreement. To justify an enhancement in excess of two annas in the rupee under that proviso, three things had to be proved:- (a) that the raiyat held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of his landlord; (b) that he was released from the obligation of cultivating that crop; (c) that he considered the rent which he agreed to pay to be fair and equitable.

A contract to pay rent at an enhanced rate by more than two annas in the rupee, except in the cases covered by the provisos (i), (ii) and (iii), was void.[92] Where the rent contracted for exceeded the statutory maximum, the Court could not reduce it to the legal maximum. The contract was absolutely void.[93] In such cases the landlord would only get a decree for the original rent, i.e., at the rate which the tenant was paying previous to the illegal contract. The statute enacted in most explicit terms that there would be no enhancement of

---

92. Kristo v. Brojo (1897) I.L.R.24 Cal.895; Prabat v. Chirag (1906) I.L.R.33 Cal. 607 at 608; Manindra v. Upendra (1908) I.L.R.36 Cal. 604 at 608; Taramali v. Safatulla (1914) 22 I.C. 854; Nafar v. Rahaman (1916) 23 C.L.J.580.

93. Kristo v. Brojo (1897) I.L.R.24 Cal. 895; Manindra v. Upendra (1908) I.L.R. 36 Cal. 604 at 608; Taramali v. Safatulla (1914) 22 I.C.854.

more than two annas in the rupee, so if there was an enhancement, however small, of more than two annas in the rupee, there was a violation of the statute which could not be allowed. The principle de minimis non curat lex had no application to a prohibitory statute which said that the enhancement should in no case be more than two annas.[94] Foster J., observed that "the rule of section 29 of the Bengal Tenancy Act was intended to be a strict one which the Courts should not allow to be defeated or evaded".[95] But a stipulation embodied in a kabuliat to pay more than two annas in the rupee in settlement of a bona fide dispute regarding the rate of rent[96] or the area of the tenancy[97] and to avoid further litigation was not an agreement to enhance within the meaning of section 29(b). In Bata v. Manindra,[98] the principle upon which this exception was based was explained as follows:-

"There can be no contract for enhancement of rent, unless both the parties to the contract are agreed upon one point, namely, that there is to be an enhancement of rent. This does not necessarily imply that the parties are agreed as to what is the amount of rent actually payable before the enhancement. To take a concrete illustration - the landlord may assert that the

---

94. Gulmati v. Jago. A.I.R.1929 Cal.658 at 659.
95. Meyrick v. Dipa (1923) 75 I.C.22 at 24.
96. Sheo v. Ram (1891) I.L.R.18 Cal.333; Nath v. Damri (1900) I.L.R 28 Cal.90; Kedar v. Maharaja (1909)11 C.L.J.106; Bata v. Manindra (1914) 19 C.W.N.321; Askaran v. Deolal A.I.R.1929 Pat.568, F.B.
97. Dabiruddin v. Midnapore Zemindary (1920), 57 I.C.650.
98. (1914) 19 C.W.N.321 at 323.

rent payable is Rs.10, the tenant may assert that the rent payable is Rs.9. If there is an agreement that the rent in future will be Rs.11, there is an agreement for enhancement, because both the parties are agreed that the rent payable in future shall be higher than the rent payable in the past,whether we accept the figure for antecedent rent as asserted by the landlord or as alleged by the tenant. It is thus clear that the operation of section 29 may fairly be limited to a case where there is a real contract for enhancement,which can not ordinarily take place. Where there is a bona fide dispute, that is a serious claim honestly made on the one hand, and honestly repudiated on the other, as to the rent payable, such dispute may be the result of a controversy as to the area of the land or the rate at which it is held or both these elements. This, we think,is a reasonable construction of section 29 of the Bengal Tenancy Act, and as it has been uniformly adopted ever since 1891, we are not prepared at this distance of time to take a different view".

The rule limiting enhancements to two annas in a rupee did not apply to the transferee of a non-transferable occupancy holding who took a settlement in order to get recognition from the landlord.[99] Thus where a non-transferable occupancy holding was purchased by a stranger and the latter, when procuring the landlord's recognition, agreed to pay one rupee in excess of the original rent, it was held that the agreement was not in contravention of section 29, because the holding was not transferable,

99. Ferasat v. Priamboda (1920) 69 I.C.414.

the transferee was not a tenant and consequently there was no rent payable by him which was enhanced.[1] This exception could not be claimed by a landlord since the enactment of the Amending Act of 1928, by which all occupancy holdings were made transferable. Moreover section 29 did not apply where the status of an occupancy raiyat had been raised to that of a raiyat at fixed rent, although the rent, newly fixed in consideration of the change of status, contravened the two annas rule.[2] Where it transpired that the raiyat was occupying land in excess of the amount contemplated at the time of the settlement or where new lands were taken by the tenant and one consolidated rent was assessed for the entire raiyat's holding, there was in essence a new lease of a fresh holding, so no question arose as to the enhancement of rent payable by the tenant.[3] Thus where five bighas of new land (including one bigha in possession of the tenant in excess of that contemplated by the original settlement) were added to the original holding and a consolidated rent was fixed by a contract, a new holding was created by the contract and a new rental was not an enhancement of the original rental.[4] But if a small

---

1. Sarat v. Shyam (1912) I.L.R.39 Cal.663 at 668; Ferasat v. Priamboda (1920) 69 I.C. 414.
2. Gur v. Feshwar (1916) 1 P.L.J.76; Ram v. Sohrai (1919) 52 I.C.20; Nagenbala v. Sridam A.I.R.1933 Cal.69; Reaz v. Bijoy, A.I.R.1935 Pat.453.
3. Rajkumar v. Faizuddi (1914) 30 I.C.283 at 284; Grant v. Eklal (1922) 67 I.C.49 at 55; Satish v. Kabiruddin (1899) I.L.R.26 Cal.233.
4. Rajkumar v. Faizuddi (1914) 30 I.C.283 at 284.

additional area was added to that previously in possession of the raiyat merely as a colourable device to give an air of legality to an illegal enhancement, the Court would look to the spirit of the law and veto the transaction.[5]

In Raj Kumar v. Faizuddi[6] the learned judges observed that "whether there has been, in substance, a new holding created, in supersession of the original holding, is a question which must be answered with reference to the circumstances of the individual case; the matter is one of substance and not of form, the Court must determine whether a new holding has been created, though it may include the land of the original holding, or whether the parties had recourse to a colourable device to evade the provisions of section 29. If the Court comes to the conclusion that a new holding has been constituted by the substantial addition of new lands to those of the original holding, section 29 has no application to the new consolidated rental". Similarly in Gobinda v. Jitendra[7] it was observed that "It is true that section 29 of the Act has no application where there are excess lands which are added to the

---

5. Ajuhannassa v. Hakim (1909) 13 C.W.N. cciii.
6. (1914) 30 I.C.283 at 285.
7. A.I.R.1938 Cal.459.

original holding and a consolidated rent is assessed upon the whole, but it is incumbent upon the Court to find in all cases that this addition of excess lands is not resorted to as a mere device to get round the provisions of section 29, and that the lands which are said to have been added were real and not a fictitious addition.....The facts that the tenant agreed to pay enhanced rent beyond the limits prescribed by section 29, and actually paid rent at that enhanced rate for a considerable period of time are by themselves not sufficient to take the case out of that section. If the original rent is known and the excess that is claimed is prima facie in excess of that which is allowed by section 29, the initial burden to justify the increase must always be upon the landlord. The landlord can discharge the burden either by showing that in fact there has been an increase of land for which additional rent was assessed and it would also be open to him to rely upon any admission made by the tenant-defendant admitting the existence of additional lands, in which case the burden will be upon the tenant to explain away the admission or to prove by positive evidence that, as a matter of fact, there was no increase".

So where the tenant had agreed to pay a higher rent on account of an increase of area found by measurement, but the landlord failed to point to any particular land as having been added to the holding, the rate per acre of the new area must be compared with the rate per acre of the old area. If the former was higher by more than two annas in the rupee, the agreement violated section 29 of the Act.[8] Where two holdings were amalgamated, the lands remaining the same; if the consolidated jama was enhanced more than two annas in the rupee, then, unless it was proved that a new tenancy had been created or the parties intended to creat a new tenancy, the incidents of the old tenancy remained unchanged, so that the landlord could not get enhanced rent in contravention of the provisions of section 29 of the Act.[9] But where a tenant, having been found in possession of lands not included in his original tenancy, entered into an agreement with the landlord to pay a consolidated rent for the lands of the original holding together with the land on which he had encroached and of which he had taken possession without consent of the landlord, a new tenancy

---

8. Sonaullah v. Bhagabati (1918) 28 C.L.J.142.
9. Kristadhan v. Golam (1916) 37 I.C.862.

was created and section 29 was not applicable in such circumstances.[10] In other words section 29 was applicable only where the identity of the holding remained constant.[11]

The true test for determining whether the additional rent was an illegal enhancement or a new contract, at a new rent, was to see whether there was any new consideration in the shape of new lands or new advantages or new rights in order to justify the addition to the original rent. Thus in Sali v. Ajijuddin,[12] the plaintiff (tenant) had one old tenancy and another with regard to which there was a dispute between the plaintiff and the defendant (landlord). The plaintiff executed a kabuliat which was made up of two parts - one relating to the former tenancy and the other that regarding which there was the dispute. According to the terms of the kabuliat the rental of the latter was increased. The suit was brought by the tenant on the ground that this enhancement of rent was in violation of the provisions of section 29 of the Act. It was

---

10. Sahar Munshi v. Jnanada (1920) 57 I.C.998; Sasi v. Genda, A.I.R. 1925 Cal.389.
11. Sahar Munshi v. Jnanada (1920) 57 I.C.998; Nazir v. Jatindra (1915) 30 I.C.320.
12. A.I.R.1927 Cal.911.

held that it was sufficient to justify an addition to the original rent that it should appear that some further consideration proceeded from the landlord. A new contract had been entered into between the parties to the original agreement for an additional consideration and the parties were free to enter into it on any terms they pleased. There was no violation of the provisions of section 29. Again, where the original holding was split up into a number of new tenancies, no question could arise as to the effect of this section.[13] But a mere division of the tenancy between two co-tenants or the heirs of a deceased tenant did not ipso facto create new tenancies so as to entitle the landlord to enhance rent in contravention of the section.[14] Similarly if the rental remained unaltered, its distribution, by agreement of the parties, over different parcels of land, did not constitute enhancement, within the meaning of the section.[15]

A compromise decree could not contravene the two annas limit.[16] But once a compromise decree had been passed in contravention of the provision of section 29, it

---

13. Nazir v. Jatindra (1915) 30 I.C.320.
14. Nafar v. Rahaman (1916) 23 C.L.J. 580.
15. Rowshan v. Shyama (1913) 20 C.L.J.331.
16. The Bengal Tenancy Act, 1885, sec.147A, sub-sec 1, Proviso.

was operative and binding between the parties, unless it was vacated by appropriate proceedings. Until it was so vacated, it operated as an estoppel by judgment. Consequently in a subsequent suit it could not be treated as passed without jurisdiction and a nullity, though the agreement itself contravened the section.[17] But where, in a compromise decree, there was a clause relating to enhancement of rent which was wholly extraneous to the subject-matter of the suit, that clause could have no greater force than any other agreement between the parties and such a clause, though embodied in a compromise decree, would come within the operation of section 29.[18]

The conversion of a cash rent into rent in kind could not be regarded as an enhancement within the meaning of section 29 of the Act.[19] That section was also not applicable to a proceeding for settlement of fair and equitable rent[20] nor to a contract executed before the passing of

---

17. Girish v. Mahammad, A.I.R.1933 Cal.66; Nagenbala v. Sridam, A.I.R.1933 Cal.69 at 71; Mahommad v. Khana A.I.R.1928 Cal.606.
18. Makhan v. Khagendra (1935) 40 C.W.N.689.
19. Hassan v. Makchhedi (1905) I.L.R.33 Cal.200; Gobind v. Banarsi (1913) 18 C.L.J.74.
20. Matha v. Gopi (1925) 89 I.C. 951.

the Bengal Tenancy Act[21] nor to an agreement to pay an enhanced rate of rent after the expiry of the term of the tenancy.[22] If a non-occupancy raiyat entered into a contract to pay an enhanced rent in excess of two annas in a rupee, then although he might subsequently acquire an occupancy right, section 29 would not apply to such a contract.[23] So also the section did not apply to hajat[24] lands.[25] It might happen that in the original contract, some part of the full rent was kept in suspense for some time, owing to the circumstances existing at the time of the creation of the tenancy[26] or a temporary remission might be allowed simply at the pleasure of the

---

21. Tejendra v. Bakai (1895) I.L.R.22 Cal.658; Mathura v. Mati (1898) I.L.R.25 Cal.781.
22. Ramadhin v. Kumodini (1918) 45 I.C.901.
23. Bepin v. Priya (1933) 37 C.W.N.720.
24. 'hajat' means remission of rent intended for some time only in the circumstances then existing at the time the tenancy was created, e.g., part of the rent is kept in suspense on the ground of some lands being patit (fallow). Nirod v. Raj Lakshmi (1928) 33 C.W.N.309 at 310; Jitendra v. Tejarat (1928) 32 C.W.N.1240; Rashmoni v. Dhirendra (1928) 33 C.W.N.311.
25. Nirod v. Pulin (1925) 33 C.W.N.312.
26. Nirod v. Raj Lakshmi (1928) 33 C.W.N.309.

landlord.[27] In the former case the full rent became payable as soon as the circumstances disappeared.[28] In the latter case, the landlord might at his pleasure withdraw the hajat at any time and a claim for the full rent was not in contravention of section 29 of the Act.[29] The Court, however, had to be satisfied that the amount of hajat was really a part of the rent agreed to be paid as consideration for the lease.[30] If it was a mere colourable device to avoid section 29 and to enable the landlord to enhance the rent at some future time at his pleasure, under the cloak of a hajat, section 29 would stand as a bar when the landlord sought to recover this sum in addition to the actual rent previously paid.[31]

We now turn to the consideration of enhancement of rent of a non-occupancy raiyat. The rent of this class of raiyat could not be enhanced except by registered agreement, or by agreement tendered through the Court under the provisions of section 46 of the Act.[32] But this did not

---

27. Jitendra v. Tejarat (1928) 32 C.W.N. 1240 at 1242.
28. Nirod v. Pulin (1925) 33 C.W.N. 312.
29. Jitendra v. Tejarat (1928) 32 C.W.N.1240.
30. Ibid.
31. Mahamaya v. Kishore (1913) 18 C.L.J.502; Nirod v. Pulin (1925) 33 C.W.N.312 at 314.
32. The Bengal Tenancy Act, 1885, sec.43.

prevent a landlord from recovering rent from the raiyat at the rate at which it was actually paid for a continuous period of not less than three years immediately preceding the period for which the rent was claimed,[33] though such rate might be higher than the rate at which the tenant was inducted upon the land. That provision gave the force of registration to a non-registered contract which was acted upon for a continuous period of three years.

As regards enhancement of rent by agreement through the Court it was provided in sub-section (6) of section 46 that "if a raiyat refuses to execute an agreement of which a draft has been tendered to him and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding". Sub-section (7) provided that "if the raiyat agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a period of five years from the date of the agreement, but on the expiry of that term, shall be liable to ejectment subject to the provisions of this Act unless he has acquired a right of

---

33. Ibid., proviso.

occupancy." Sub-section (9) provided that "in determining what rent is fair and equitable, the Court shall have regard to the rents generally paid by raiyats for land of a similar description and with like advantages in the same village." Finucane and Ameer Ali observed that sub-section (6) coupled with sub-section (9) provided a uniform basis for the enhancement of the rent of non-occupancy raiyats, which was entirely wanting under the former law. In the absence of a governing principle, there was no uniformity in the decision of the Courts; in some instances it was held that the landlord was entitled to impose what terms he liked on the raiyat; in others it was held that a non-occupancy raiyat was bound to pay only a fair and equitable rent.[34] In conformity with this principle the Bengal Tenancy Act declared the test of "fair and equitable rent" as the safest guide for the Courts in sub-sec (6) and (9) of section 46. But where it was stipulated that if the tenant continued in possession of the land after the expiry of the first kabuliat, he would have to pay rent at a higher rate,

---

34. N.Finucane and Ameer Ali, op.cit.p.237.

it was held[35] that such a stipulation could be enforced even if the tenant acquired occupancy rights during the period of the kabuliat. It was also held that the acquisition of the occupancy right after the institution of the proceedings under section 46 of the Act prior to a decree could not defeat the suit.[36] The enhanced rent was payable by the tenant from the date when the raiyat agreed to pay the rent determined by the Court.[37]

We have seen above that in the case of an occupancy raiyat the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat and the rent fixed by the contract should not be liable to enhancement during a term of fifteen years from the date of the contract. But there was no such restriction on the enhancement of a non-occupancy raiyat's rent.

The year 1938 brought good news to Bengal raiyats; all the provisions of the Bengal Tenancy Act, 1885, relating

---

35. Bepin v. Priya (1933) 37 C.W.N.720; Kuman v. Kachali A.I.R.1928 Pat.62.
36. Kinu v. Kiranbala (1933) 37 C.W.N. 586 = A.I.R.1933 Cal. 653 at 656.
37. Wajibunnissa v. Babulal, A.I.R. 1926 Pat 42 at 45; Port Canning v. Asiruddy, A.I.R. 1929 Cal. 334.

to enhancement of rent either by suit or contract were suspended for a period of ten years from the 27th August 1937 by section 75A of the Act which was introduced by the Amending Act, 1938. This period was again extended for a further five years from the 27th August 1947 by the Amending Act of 1947. Consequently there was no enhancement of rent either by suit or by contract during the period from the 27th August 1937 till the 26th August 1952. Clause (a) of sub-section (2) of section 75A provided that all decrees and orders for enhancement of rent passed on or after the 27th August, 1937 would remain inoperative during the said period of fifteen years. Clause (b) of the same sub-section provided that all contracts for enhancement of rent entered into during the said period of fifteen years would likewise remain inoperative during the said period. The section did not, however, prohibit the making of any contract for enhancement of rent during the period in question. It simply provided that such contracts entered into during the period of fifteen years from the 27th August,1937 could not be enforced till after the termination of the period. But the decrees and orders for enhancement passed and the contracts for enhancement entered into before the 27th August 1937 were not affected by the provisions of section 75A of the Act.

Sec. 3 Reduction of rent

Section 18 of the Bengal Rent Act, 1859 and section 19 of the Bengal Act, 1869 provided that "every ryot having a right of occupancy shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by diluvion or otherwise, or if the value of the produce or the productive powers of the land have been decreased by any cause beyond the power of the ryot, or if the quantity of land held by the ryot has been proved by measurement to be less than the quantity for which rent has been previously paid by him." The first and the third grounds in these sections, which refer to alteration of the area of the holding were embodied in section 52 of the Bengal Tenancy Act, 1885. We have already discussed those grounds in section 4 of Chapter 4. Section 38 of the Bengal Tenancy Act,1885 adopted only the second ground and divided it into two portions. Sub-section (1) of that section, as it stood before the Bengal Tenancy (Amendment) Act of 1928, ran as follows:-

"38. (1) An occupancy-raiyat holding at a money rent may institute a suit for the reduction of his rent on the following grounds, and, except as hereinafter

provided in the case of a diminution of the area of the holding, not otherwise (namely):-

(a) on the ground that the soil of the holding has without the fault of the raiyat become permanently deteriorated by a deposit of sand or other specific causes, sudden or gradual, or

(b) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent."

This sub-section was amended by the Bengal Tenancy (Amendment) Act, 1928. After the amendment it stood as follows:-

"38.(1) An occupancy raiyat may institute a suit for the reduction of his rent on one or more of the following grounds, and except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise (namely):-

(a) on the ground that the soil of the holding has without the fault of the raiyat become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual,

(b) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent, or

(c) on the ground that the landlord has refused or neglected to carry out the arrangements, in respect of the irrigation or the maintenance of embankments which were in force at the time when the rent was settled, and the soil of the holding has thereby deteriorated.

Explanation. - A suit for reduction of rent properly framed for the purpose may be instituted or a plea for reduction of rent taken by any one among a number of co-sharer tenants of a holding."

Prior to the amendment of 1928, there was no provision in the law for reduction of rent in kind. Under this amendment an occupancy raiyat whether holding at a money rent or rent in kind was entitled to sue for reduction of rent; for the words "holding at a money rent" occurring in sub-section (1) of the original section was omitted. The reason for the omission was thus explained by the mover of the amendment (Mr.M.N.Maiti):-

"Under the existing Bengal Tenancy Act, the occupancy raiyats holding at a produce rent have the right of applying under section 40 for commutation of their produce-rent to money rent, if they found it difficult to pay produce rent and in such cases money rent at a much less rate than the average price of the produce is generally found fair and equitable by the officer to whom this application is made, considering all the circumstances mentioned in the section. Now as this power of applying for commutation is taken away and section 40 is repealed the raiyats paying rent in kind are deprived of any chance of reduction of their rent, though their produce-rent may be very high and this would be a great hardship to them. As occupancy raiyats paying produce-rent had this right of

commutation and thus getting a reduction of their rent this sub-section 38 was confined to raiyats paying money-rent only; and there is no reason why this section should now be restricted to occupancy raiyats paying money-rent only. As section 40 is omitted I think this section 38 should be so worded as to include raiyats paying rent in kind also and this purpose can be served by the omission of the words 'holding at a money-rent'. This amendment if allowed, would include all occupancy raiyats whether they pay money-rent or rent in kind. There is no reason why raiyats paying produce-rent and raiyats paying money-rent should be differently treated in this respect".[38] The amendment was accepted by the Council.

Now the first ground for claiming reduction of rent was that "the soil of the holding has without the fault of the raiyat become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual". In Gouri v. Reily[39], it was said that the judge of the Court below was wrong in his interpretation of the word "permanent" in this section. He seemed to think that a deterioration

---

38. The Bengal Legislative Council Proceedings, 1928, vol.XXX,No.2, p.322.
39. (1892)I.L.R. 20 Cal.579 at 586; also Krishna v. Palakdhari (1915) 20 C.W.N. 1157; Rameshwar v. Badri A.I.R. 1930 Pat. 105; Lal v. Mahabir A.I.R.1936 Pat.414.

ought not to be held to be permanent, if by application of capital and skill the cause of the deterioration might be removed. But a more liberal interpretation should have been put upon the word and it ought to have been construed with reference to existing conditions. Thus when a piece of land is covered with sand, the deterioration is permanent within the meaning of the section because "no human being can tell when it may please a higher power to cause the river to wash away the sand again or to deposit fresh earth upon it..... The more uncertain the result is, the more it must be held to come within the meaning of the word 'permanent' as construed with reference to existing conditions".[40] But mere deposit of sand was not enough, it had to be shown that such deposit adversely affected the productive powers of the land; otherwise the tenant would not be entitled to any relief.[41] It did not matter whether the deterioration was due to a sudden cause or had occurred gradually, but it was essential that it had occurred without the fault of the raiyat. If the

---

40. Krishna v. Palakdhari (1915) 20 C.W.N. 1157 at 1158.
41. Mukta v. Nirmal A.I.R. 1934 Pat.5.

deterioration had been occasioned by the laches or acts of the raiyat himself, he had no right to relief under this section.[42]

The second ground was that "there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent." We have seen before[43] that the rise in the prices of staple food crops was a ground of enhancement of rent under section 30(b) of the Act, so necessarily a fall in the prices was a good ground for reduction of rent. A fall in prices from temporary causes was of no account, and to be effective it must have taken place during the currency of the present rent. The expression "not being due to a temporary cause" showed that this section would not give relief to the tenant from changes in the proportions due to [redacted] temporary economic depression.[44]

The third ground was that "the landlord has refused or neglected to carry out the arrangements, in respect of

---

42. M.Finucane and Ammer Ali, op.cit., p.212.
43. Supra, p.461.
44. Nathuni v. Ramsaran, A.I.R. 1932 Pat 225 at 228.

the irrigation or the maintenance of embankments which were in force at the time when the rent was settled, and the soil of the holding has thereby deteriorated." This clause was introduced by the Amending Act of 1928. Its object was that "it is reasonable that where a raiyat has had his rent settled when certain arrangements in respect of irrigation or maintenance of embankments were in force he should receive a reduction of his rent so long as the landlord fails to carry out his obligations in this respect."[45] The Select Committee suggested that "it must also appear that the soil of the holding has as a result of such failure deteriorated".[46]

On the point Mr.F.A.Sachse in the Council said:- "There are many areas in Khulna, Backergunj and Chittagong where the raiyat has taken settlement of paddy lands on a fairly high rent in the expectation that the embankments will be maintained in the same way that he has seen them maintained for years by the landlord. If suddenly the landlord neglects his duty, and the salt rivers flood the land, why should not the raiyat get a

---

45. Notes on clause 27 of the Bill = The Calcutta Gazette dated July 12,1928, Part IV,pp.98-99.
46. Ibid.

reasonable reduction of rent."[47]

An occupancy raiyat might institute a suit for reduction of rent on any one or more of the grounds in section 38 of the Act. It was an enabling section and consequently by implication it did not deprive the tenant of his right to obtain a reduction by other methods. Alternatively he could claim an abatement by way of defence in a rent suit.[48] The explanation added to section 38 by the Amending Act, 1928 gave co-sharing tenants occupying a holding the right to institute a suit or take a plea for the reduction of rent either in their several or individual capacity, making the other co-sharer tenants parties to the suit. "It is the same common principle", said Mr.A.K.Fazlul Huq,(Chief Minister of Bengal), "on which a co-sharer landlord is entitled to claim relief against a number of tenants.....It makes the position clear so far as the individual rights of a number of tenants are concerned."[49]

---

47. Bengal Legislative Council Proceedings, 1928, Vol.XXX, No.2, p.324.
48. Gosta v. Hem (1924) I.L.R. 51 Cal.1022 = 29 C.W.N.124; Rameshwar v. Badri A.I.R.1930 Pat.105.
49. Bengal Legislative Council Proceedings, 1928, Vol.XXX No.2, p.331.

Section 38 did not preclude a raiyat from entering into any agreement for the reduction of the existing rent but a raiyat could not contract with his landlord to surrender his right to claim a reduction of rent; for it was expressly provided in section 178(3)(e) that "nothing in any contract made between a landlord and a tenant after the passing of the Bengal Tenancy Act shall take away the right of a raiyat to apply for a reduction of rent under section 38 or section 52."

Section 38 was not applicable to a raiyat at fixed rates.[50] The earlier Rent Acts of 1859 and 1869 and the Bengal Tenancy Act, 1885 did not make any provision for the reduction of rent of a non-occupancy raiyat but it was said that "no doubt it is only an occupancy raiyat, who is authorised by the Act to bring a suit under section 38, but the principle laid down in that section ought clearly to be taken into consideration in all proceedings for the settlement of rent, whatever the status of the raiyats."[51] Apart from this, it appears from section 178(3)(e) noted above that a non-occupancy raiyat could

---

50. The Bengal Tenancy Act, 1885, sec.18, sub-sec.(2).
51. Gouri v. Reily (1892) I.L.R.20 Cal. 579 at 586.

apply for reduction of his rent under section 38, as that clause used the word "raiyat" and not "occupancy raiyat". So the effect of that section was to extend the provisions of section 38 to a non-occupancy raiyat.

CHAPTER 7

Recovery of raiyats' arrears of rent

Sec. 1. Recovery of arrears of rent by rent suit

Parties to a rent suit. - A landlord might recover arrears of rent from a raiyat by a rent suit. Any instalment or part of an instalment of rent not paid when it fell due became an arrear of rent.[1] In such a suit the landlord and the tenant were obviously necessary parties but the question arose whether a third party might be impleaded in a rent suit. The leading case on the point is Lodai Mollah v. Kally Das.[2] In that case it was held that, where the defendant in a suit for rent set up the title of a third party and alleged that he held under and paid rent to him, such third party ought not to be made a party to a suit, so as to convert a simple suit for arrears of rent into one for the determination of title to the property in respect of which the rent was claimed.

Statutory disability of landlord to recover rent. - There were statutory restrictions on the right of a landlord to recover rent by suit. Section 78 of

---

1. The Bengal Tenancy Act, 1885, sec.54(5).
2. (1881) I.L.R. 8 Cal. 238.

the Land Registration Act, 1876 debarred proprietors, managers and mortgagees of estates and revenue-free properties from recovering rent due to them, unless their names were registered in the Collectorate under that Act, provided that objection was raised to their claims on this ground. But they were not precluded from recovering rent from tenants who took leases of land in writing containing a contract to pay rent.[3] The prohibition, however, related to their recovering the rent but not to their bringing an action, so that, if the plaintiff could prove registration of his name before the conclusion of the hearing, he might get a decree; it was not essential that his name should be registered before the suit was instituted.[4] If some out of several proprietors of an estate, who collected the rent jointly, had been registered under the Act in respect of their fractional shares, they were entitled to get a decree for rent proportionate to the share in respect of which their names were registered.[5]

Under sections 19 and 20 of the Bengal Cess

---

3. The Land Registration Act, 1876, sec.81; Bhugwan v. Raghunath (1909)11 C.L.J.477.
4. Alimuddin v. Hiralal (1895) I.L.R. 23 Cal.87 F.B.
5. Nilmadhab v. Ishan (1898) I.L.R. 25 Cal.787.

Act, 1880 omission to lodge returns regarding valuation of the property and omission to mention a particular jama in the return might preclude the holder of an estate or tenure from recovering rent by suit. Those sections ran as follows:-

"19. Every holder of an estate or tenure in respect of which such notice (that is a notice of valuation) has been served shall be precluded from suing for or recovering rent for any land or tenure situate in any estate or tenure in respect of which no return has been lodged."

"20. Every holder of an estate or tenure in respect of which a return has been made as required by this chapter shall be precluded from suing or recovering -

"(a) any rent whatever for any land, holding or tenure forming part of the estate or tenure to which such return relates but which has not been mentioned in such return, unless it be proved that the holding or tenure for the rent of which the rent is claimed was created subsequently to the lodging of such return;

"(b) rent at any higher rate than is mentioned in such return for any land, holding or tenure included in such return, unless it be proved that the rent of such land or tenure has been lawfully enhanced subsequently to the lodging of such return."

Section 15 of the Bengal Tenancy Act, 1885 declared that when a succession to a permanent tenure took place, the person succeeding was to give notice of succession to the landlord or his common agent, if any, in the prescribed form within six months from the

date of the succession. If he failed to perform this duty, he was debarred from recovering the rent from his tenant by suit or other proceeding.[6] It did not, however, bar the institution of a suit but only barred the recovery of rent whether by suit or proceeding.[7]

Position of co-sharer landlord. - Before the Western Bengal Tenancy (Amendment) Act, 1907 and the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, "considerable difficulty in realizing rents was often experienced by co-sharer landlords, who made rent collections jointly. A decree for arrears of rent, obtained by a co-sharer for the amount due to him alone, was a mere money decree[8] and the tenure or holding, in respect of which the arrears were due, did not pass to the purchaser in a sale for the execution of such a decree[9], unless he could get himself recognised by the other co-sharers. Decrees for arrears of rent obtained

---

6. The Bengal Tenancy Act, 1885, sec.16.
7. Kalihur v. Umae (1896) I.L.R. 24 Cal.241; Mabatullah v. Nalini (1905) 10 C.W.N. 42.
8. Jogendra v. Paban (1904) 8 C.W.N. 472.
9. Narain v. Srimanta (1901) I.L.R. 29 Cal.219.

by single co-sharers, were therefore often of little value"[10]. The result of the case law showed that - "suits in which co-sharer landlords sue for rent are not rent suits, but money suits; the provisions of section 148[11] do not apply to them; evidence in such suits can not be recorded summarily; a second appeal lies in them, while an appeal is barred in the case of a decree obtained by a sole landlord; co-sharer landlords can not sue for four years' rent as sole landlords can, under article 2(b), schedule III of the Act; and decrees obtained in suits by co-sharer landlords can be executed within twelve years, instead of within three, as in the case of ordinary rent decrees"[12]. Moreover the position of tenants was unsatisfactory as "it exposed them to the trouble of several successive

---

10. Notes on clause No.34 of the Western Bengal Tenancy (Amendment) Bill, 1906= The Calcutta Gazette dated October 24, 1906, Part IV, p.18; The Calcutta Gazette dated November 14, 1906, Part IV, p.37; Notes on clause No.44 of the Eastern Bengal and Assam Tenancy (Amendment) Bill, 1907 = The Eastern Bengal and Assam Gazette dated November 13, 1907, Part V, p.57.
11. This section of the Bengal Tenancy Act, 1885 dealt with procedure in rent suits.
12. Notes on clause No.39 of the Western Bengal Tenancy (Amendment) Bill, 1906 = The Calcutta Gazette dated October 24, 1906, Part IV, p.19; The Calcutta Gazette, dated November 14, 1906, Part IV, p.38; The notes on clause No.58 of the Eastern Bengal and Assam Tenancy (Amendment) Bill, 1907 = The Eastern Bengal and Assam Gazette dated November 13, 1907, Part V, pp.58-59.

suits brought by different co-sharer landlords"[13]. In this state of things, in the course of hearing of a Full Bench case the Chief Justice observed that "as there appeared to be a considerable conflict of judicial opinion on the question, it would be well if the legislature settled it"[14]. Consequently the Bengal Tenancy Act was amended by inserting section 148A, applicable in Western Bengal as well as Eastern Bengal and Assam, whereby power was given to co-sharer landlords to realise their rents by suits to which the special benefits conferred by the Act applied. Section 148A of the Western Bengal Tenancy (Amendment) Act, 1907 provided as follows:-

> "148A. When a co-sharer landlord who has instituted a suit to recover the rent due to all the co-sharer landlords in respect of an entire tenure or holding, and has made all the remaining co-sharers parties defendant to the suit, is unable to ascertain what rent is due for the whole tenure or holding, or whether the rent due to the other co-sharer landlords has been paid or not, owing to the refusal or neglect of the tenant, or of the co-sharer landlords defendant to the suit, to furnish him with correct information on these points, or on either of them,
>
> "such plaintiff co-sharer landlord shall be entitled to proceed with the suit for his share only of the rent, and a decree obtained by him in a suit so

---

13. The notes on clause ~~Ba.~~34 of the Western Bengal Tenancy (Amendment) Bill, 1906; The notes on clause ~~Ba.~~44 of the Eastern Bengal and Assam Tenancy (Amendment) Bill, 1907.
14. The report of the Select Committee of the Bill, 1906 dated 6th March, 1907, para 47 = The Calcutta Gazette dated March 9, 1907, Part IV, p.12.

framed shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers."

Section 148A of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 provided as follows:-

"148A. Where a co-sharer landlord who is entitled to sue for his share of the rent separately and has instituted a suit to recover the rent due to all the co-sharer landlords in respect of an entire tenure or holding, and has made all the remaining co-sharers parties dependant to the suit, is unable to ascertain what rent is due for the whole tenure or holding, or whether the rent due to the other co-sharer landlords has been paid or not, owing to the refusal or neglect of the tenant, or of the co-sharer landlords defendant to the suit to furnish him with correct information on these points, or on either of them,

"such plaintiff co-sharer landlord shall be entitled to proceed with the suit for his share only of the rent, and a decree obtained by him in a suit so framed shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers."

The underlying principle of the two versions of this section was the same, but on one point they materially differed from each other. According to the section prevailing in Western Bengal, a co-sharer landlord, whether he had a right to sue separately for his share of the rent (by virtue of an agreement for separate collection) or not, could bring a suit for rent, whereas, according to the section prevailing in Eastern

Bengal and Assam the application was limited to such co-sharers of lands as had the right to sue separately for their shares of the rent. This restriction found support from the Select Committee which dealt with the Bill of 1907. In their report they said:- "The intention of the framers of the bill was to limit the application of this clause to such co-sharers as collect their shares of the rent separately. We have inserted words to make their intention clear".[15] Although the Eastern Bengal and Assam version applied only to such co-sharer landlords as were entitled to sue for their shares of the rent separately, it did not interfere with the right of a co-sharer landlord who was not entitled to sue separately, to sue under the general law for the whole rent by joining as defendants his co-sharers who refused to join as plaintiffs.

The amendments of 1907 and 1908 were not very popular as they created a complex system of procedure. Under the amendments a co-sharer landlord had to sue for the whole rent due; a suit limited to his share of the rent was possible only on the pretext that

---

15. The report of the Select Committee of the Bill of 1907 dated 9th March 1908, para 18 = The Eastern Bengal and Assam Gazette dated 8th April 1908, Part V, p.4.

such fractional amount was the only ascertainable amount due out of the total rent. So sec.148A was amended by the Bengal Tenancy (Amendment) Act, 1928. It was provided in sub-section (1) of that section that "a co-sharer landlord may institute a suit to recover the rent due to him in respect of his share in a tenure or holding by making all the remaining co-sharer landlords parties defendant to the suit, and claiming that relief be granted to him in respect of his share of the rent against the entire tenure or holding." If the remaining co-sharer landlords did not come forward as plaintiffs, they were debarred from getting any decree for arrears of rent for the period in suit[16].

Issues in rent suit. - A suit for the recovery of arrears of rent primarily raised two issues[17]: (a) whether the relation of landlord and tenant existed between the plaintiff and the defendant? (b) were the alleged arrears of rent due and unpaid? "The first question", observed Field J., "may have to be decided under one of two possible cases - (i) where the plaintiff

---

16. The notes on clause 95 of the Bill of 1928 = The Calcutta Gazette dated July 12, 1928, Part IV, p.103; The Bengal Tenancy Act, 1885, sec.148A, sub-sec.9.
17. Lodai Mollah v. Kally Das (1881) I.L.R. 8 Cal.238; Dayal v. Nabin (1871) 8 B.L.R. 180 at 193.

has let the defendant into possession of the land, (ii) where the plaintiff is not himself the person who let the defendant into possession, but claims under a title derived from the person who did. Now in the first of these two cases the relation of landlord and tenant may have been created in some one of the following ways: (a) by written contract; and where there is a written contract, if it be necessary to prove the terms of the tenancy, such written contract must be produced and proved, (b) by an oral contract, (c) there may have been no express contract, written or oral, but the relation of landlord and tenant may be inferred from the circumstances, for example, from the payment of rent, from submitting to a distress."[18]

Now let us consider how far the question of title might be raised in a rent suit., We have noted above that in Lodai Mollah v. Kally Das[19] it was held that no third party claiming a title adverse to the plaintiff could properly be made a party to the trial of the issues so as to convert a simple rent suit into a title suit. In that case Field J., elaborately explained the scope of a rent suit and laid down the following principles:-

---

18. Lodai Mollah v. Kally Das (1881) I.L.R. 8 Cal.238 at 241.
19. (1881) I.L.R. 8 Cal.238; also Biressur v. Jogendra (1875) 24 W.R. 261; Auluck v. Dinonath (1875) 24 W.R. 421; Dayal v. Nabin (1871) 8 B.L.R. 180 at 193.

"Where the plaintiff originally let the defendant into possession of the land, the possible pleas that may be taken by the defendant are questions with which the plaintiff and defendant only are concerned and no third party claiming a title adverse to the plaintiff can properly be made a party to the trial of these questions.... Where the plaintiff claims by a derivative title, and the defendant has attorned to him, the defendant is not thereby estopped from showing that the title is really not in the plaintiff but in some other person.... Where there has been no attornment, the plaintiff must prove his title as a condition precedent to establishing the relation of landlord and tenant between himself and the defendant; if there be none of the other defences already referred to, this may be the only point to be decided."[20]

That decision was considered and explained in subsequent cases as not laying down a rigid rule that in a rent suit the question of title should never be agitated[21]. In Chitpore Golabari v. Girdhari[22] Rankin J.,

---

20. Lodai Mollah v. Kally Das (1881) I.L.R. 8 Cal.238 at 243.
21. Rahimannessa v. Mahadeb (1910) 12 C.L.J. 428 at 432; Tinkari v. Nagendra (1923) 27 C.W.N. 716 at 718; Abdul Gafur v. Ali meah (1923) 28 C.W.N. 805 at 807; Indra v. Sarbasova A.I.R. 1925 Cal.743; Ananga v. Habibulla A.I.R. 1931 Cal.673; Akhil v. Ramani A.I.R. 1933 Cal.824.
22. A.I.R. 1925 Cal.530 at 531.

observed:- "In a rent suit there is no rule of law that questions of title which require to be determined are not to be determined, but there are two reasons why, in general, questions of title as between the plaintiffs and third persons do not require to be determined. The first reason is that for a claim to rent, as distinct from damages, mere proof of the plaintiff's title is not sufficient. The second reason is that the plaintiff, who, as against the third person, has no title, may have a perfectly good claim, against the tenant whom he has inducted for rent. Accordingly between the landlord and the tenant the question of relationship subsisting between them and the question of the plaintiff's or any body else's title are distinct questions though they may, for accidental reasons, become entangled."

In Abdul Gafur v. Ali meah[23] it was held that, when the defendant disputed the extent of the title of the plaintiff to the arrears demanded, it was incumbent on the court to determine the point before the claim was allowed or disallowed. But, in order to determine this contention of the defendant, parties should not be added

---

23. (1923) 28 C.W.N. 805 at 807.

in a suit for rent so as to alter its nature and scope and to transform it into a suit for determination of a complicated question of title to land.

We have noted above that, in a suit by a co-sharer landlord, under section 148A of the Bengal Tenancy Act, 1885, for arrears of rent in respect of his share, he had to join his other co-sharers as parties in order to get a rent decree. Accordingly in Akhil v. Ramani[24] a suit was brought by a co-sharer landlord for an arrear of rent in respect of his share by joining the other co-sharer as a defendant because he refused to join as co-plaintiff. The tenants denied the title of the plaintiff co-sharer; they pleaded that the defendant co-sharer was the full owner and the rent had been paid to him. The defendant co-sharer supported the tenants in their defence. Consequently the question of title, as between the two co-sharers was decided; it was held that the Court was justified in deciding the question of title and the decree was not set aside on appeal.

In Tinkari v. Nagendra[25] a claim for rent was made against the tenant defendant and the plaintiffs

---

24. A.I.R. 1933 Cal. 824.
25. (1923) 27 C.W.N. 716.

added an alternative prayer that if the pro forma defendants had realised rent in excess of their share from the tenant, a decree might be passed against them for the excess realised; it was held that it was necessary and proper to determine the question of title between the plaintiff and the pro forma defendants. In delivering the judgment of the Court Rankin J., observed that "there is no rigid rule of law to the effect that in a rent suit, properly so called and filed under the provision of section 148, a question of title may not be determined, if it arises."[26]

Onus of proof in rent suit. - Unless the relationship of landlord and tenant was admitted the onus was on the landlord to prove it. A defendant might admit that he held land under the plaintiff but not the land of the particular tenancy alleged by the plaintiff[27]. In other words, the plaintiff must prove, not only that the relationship of landlord and tenant existed between himself and the defendant, but also that it existed in respect of the lands in suit. Where the defendant's plea was that he held other lands at a different rate, the

---

26. Ibid, p.718.
27. Ramdev v. Newaj (1909) 10 C.L.J. 196.

proper issue to be tried was whether the defendant held the land set forth in the plaint at the specified rent. A simple issue whether the defendant held the jamas set forth in the plaint under the plaintiff was not sufficient[28].

Once it was established that the parties had once stood to each other in the relationship of landlord and tenant or had been acting towards each other as such, the burden of showing that the relationship ceased was on the defendant[29]. It was said in a Patna case[30] that the relationship once established continued, unless there was a change in the position by an agreement or by operation of law or in any other valid way.

The onus of proving the rate of rent as claimed was upon the landlord[31]. If he failed to discharge that onus, he could get a decree at the rate admitted by the tenant. In such a case it was not the duty of the Court to ascertain what was the fair rent payable, unless it was asked to do so[32]. But if the

---

28. Baichal v. Shaik (1894) 1 C.W.N. 152.
29. Rungo v. Abdool (1878) I.L.R. 4 Cal. 314; Mohun v. Meer Shamsul (1873) 21 W.R. 5.
30. Dedal v. Bindeswari A.I.R. 1929 Pat.440. at 444.
31. Samira v. Gopal (1864) 1 W.R. 58.
32. Rash Dhary v. Khakon (1897) I.L.R. 24 Cal. 433.

landlord proved the original contract, the onus of proving that the rate had been reduced by a subsequent agreement lay upon the tenant[33].

Where the tenancy was created by a written lease, oral evidence was not admissible to prove the rate of rent by reason of section 91[34] of the Indian Evidence Act, 1872[35]. But evidence was admissible to show that the Kabuliat was never intended to be acted upon or that there was a waiver of its terms[36]. By accepting rent at a reduced rate for some years, the landlord was not deprived of his right to claim rent at the full rate stipulated in the Kabuliat[37]. But the evidence that, since the execution of the Kabuliat, the tenant paid rent at a lower rate than that stated in

---

33. Kanti v. Suchitra (1939) 43 C.W.N. 855.
34. Section 91 of the Indian Evidence Act, 1872 provides: "When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained...."
35. Atul v. Zahed A.I.R. 1941 Cal.102.
36. Beni v. Lalmoti (1898) 6 C.W.N. 242.
37. Kailash v. Darbaria (1915) 20 C.W.N. 347.

the Kabuliat was admissible to show the intention of the parties that the Kabuliat was not intended to be acted upon[38].

The mere acceptance of a reduced rent by the landlord, though it might amount to a full acquittace of rent for the particular year or years for which rent was paid, could not operate as a binding contract between the parties without proof of the agreement which formed the basis of the reduction granted[39]. The onus was on the defendant to establish that there had been a permanent relinquishment of the right by the plaintiff to receive the higher rent[40]. At the same time, the fact of mere non-realization of rent, according to the terms of the Kabuliat, for a number of years, did not necessarily lead to the inference that there had been a waiver of the right to receive the rent fixed under it[41]. At any rate, when the lease was registered, a variation of the rent, by way of reduction or otherwise, could not be effected or proved without another registered document[42].

---

38. Beni v. Lalmoti (1898) 6 C.W.N. 242; Kailash v. Darbaria (1915) 20 C.W.N. 347.
39. Radha v. Bhowani (1901) 6 C.W.N. 60 and 62.
40. Lakshmi v. Nabadwip (1928) I.L.R. 56 Cal. 201.
41. Ibid, p.208.
42. Ibid. p.207.

Similarly, the mere fact that the tenant had not paid any rent after the execution of the Kabuliat did not show that it had not been acted upon or would absolve him from his liability to pay rent under it[43]. On the other hand the mere fact that a tenant some time ago had executed a Kabuliat for a limited period at a particular rate of rent was not sufficient in itself to throw upon the defendant the entire burden of proving what the particular rate was, without any evidence on the part of the landlord that the rent specified in the Kabuliat had ever been realized from the defendant[44].

Procedure in rent suits. - The procedure in rent suits was laid down in chapters XIII and XIV of the Bengal Tenancy Act, 1885. The policy of the legislature in making such special provisions was on the one hand to provide for the speedy realization of rent by the landlords and on the other hand to safeguard tenants[45], from successive suits[46], and improvident compromises[47]. The Code of Civil Procedure, 1908 applied in a rent suit

---

43. Isab v. Gurucharan A.I.R. 1929 Cal.431.
44. Mukund v. Arfan (1897) 2 C.W.N. 47.
45. Raja Ban Behari v. Khetterpal (1911) 16 C.W.N. 259 at 261.
46. The Bengal Tenancy Act, 1885, sec.147(1).
47. Ibid, sec.147A(1).

subject to the provisions of the Bengal Tenancy Act. A rent suit must be instituted in the Civil Court which would have jurisdiction to entertain a suit for the possession of the holding in connection with which the suit was brought[48]. Under the Amending Act of 1928, it was clearly declared that "no suit between landlord and tenant as such shall be instituted in any court other than a court within the local jurisdiction of which the lands of the tenure or holding, as the case may be, are wholly or partly situated"[49]. Where a landlord instituted a suit against a raiyat for the recovery of any rent of his holding, he could not institute another suit against him for the recovery of any rent of that holding until after nine[50] months from the date of the institution of the previous suit[51].

The plaint in a rent suit must, in addition to other particulars, contain a statement of the situation, designation, extent and boundaries of the land held by

---

48. Ibid, sec.144.
49. Ibid.
50. The word 'nine' was substituted for the word 'three' by section 30(1)(a) of the Bengal Tenancy (Amendment) Act, 1938.
51. The Bengal Tenancy Act, 1885, sec.147(1).

the tenant[52]. But where the plaintiff was unable to give the extent or boundaries of the land, he had to give a description sufficient for its identification[53]. It was also necessary that the plaint should contain a statement as to whether a record-of-rights had been prepared and finally published in respect of such land[54]. If it had been finally published, it was sufficient to give in the plaint the Khatian[55] number of the tenancy, the survey plot number[56] and the area and rental according to such record[57]. Where any changes had occurred in the area, survey plots or rent of the tenancy since the final publication of the record-of-rights, it was necessary to include in the plaint a statement showing the particulars of such changes[58].

A written statement could not be filed without the leave of the Court but the Court was obliged to

---

52. Ibid, sec.148(b).
53. Ibid.
54. Ibid.
55. Khatian = record-of-rights.
56. Report of the Select Committee of the Western Bengal Tenancy (Amendment) Bill, 1906, para 41 = The Calcutta Gazette dated March 9, 1907, part IV, p.10.
57. The Bengal Tenancy Act, 1885, sec.148(c). This clause was substituted for clause (b1) by sec.93(4) of the Bengal Tenancy (Amendment) Act, 1928.
58. Ibid, sec.148(d). This clause was substituted for former clause (b2) by sec.93(5) of the Bengal Tenancy (Amendment) Act, 1928.

record its reasons for granting or refusing such leave[59]. When a defendant admitted that money was due from him on account of rent, but pleaded that it was due not to the plaintiff but to a third person[60] or that the amount claimed was in excess of the amount due[61], the Court would refuse to take cognizance of the plea, unless the defendant paid into Court the amount admitted to be due[62] or such reasonable portion of the money as the Court directed[63]. The Court might, when passing the decree, order its execution on the oral application of the decree-holder[64].

When a decree was passed ex-parte against a tenant, he might apply to the Court by which the decree was passed for an order to set aside the decree[65]. If the Court was satisfied that summons was not duly served and that there was prima facie evidence of a bona fide defence, it might make an order setting aside the decree[66].

---

59. Ibid, sec.148(i). This clause was formerly numbered (e).
60. Ibid, sec.149(1).
61. Ibid, sec.150.
62. Ibid, sec.149(1) and 150.
63. Ibid, sec.151.
64. Ibid, sec.148(m). This clause was formerly numbered (g).
65. Ibid, sec.148(K)(iv). This clause (K) was formerly numbered (f1) and was substituted by the Amending Act of 1928.
66. Ibid.

An essential ingredient of every application for an order to set aside a decree passed ex-parte, or for a review of judgment was a statement of the injury sustained by the applicant by reason of the decree or judgment[67] and no such application could be admitted (a) unless the applicant, at or before the time when the application was admitted, deposited in Court to which the application was presented the amount, if any, which he admitted to be due from him to the decree holder, or such amount as the Court might direct; or (b) unless the Court, after considering the statement of injury, was satisfied that no such deposit was necessary[68].

In execution of a decree against a tenant in a rent suit, a holding at fixed rate was ordinarily sold subject to all registered or notified incumbrances[69]. But if the bidding did not reach a sum sufficient to liquidate the amount of the decree and costs and if the decree holder desired that the holding should be sold with power to avoid all incumbrances, the holding was sold on a subsequent day with power to annul all incumbrances[70]. An occupancy holding, however, was put

---

67. Ibid, sec.153A.
68. Ibid.
69. Ibid, sec.164.
70. Ibid, sec.165(1).

up to sale in the first instance with power to avoid all incumbrances[71]. The procedure for annulling incumbrances was contained in section 167 of the Act; and that procedure was the only method by which incumbrances could be avoided[72]. Under that section a purchaser of a holding at fixed rate or an occupancy holding might within one year from the date of the confirmation of the sale or the date on which he first had notice of the incumbrance, whichever was later, present to the Court an application in writing requesting him to serve on the incumbrancer a notice declaring that the incumbrance was annulled[73]. The incumbrance was deemed to be annulled from the date on which the notice was served[74]. The sale of a holding did not make any incumbrance thereupon ipso facto void[75].

When an order for the sale of a holding for arrears of rent was made, the holding could not be released from attachment unless, before it was knocked down to the auction purchaser, the amount of the decree,

---

71. Ibid, sec.166(1).
72. Ibid, sec.165(2) & 166(2); Gocool v. Debendra (1911) 14 C.L.J. 136.
73. The Bengal Tenancy Act, 1885, sec.167(1).
74. Ibid, sec.167(3).
75. Beni v. Rewat (1897) I.L.R. 24 Cal.746.

together with the cost incurred, was paid into Court, or the decree holder made an application for the release of the holding on the ground that the decree had been satisfied out of Court[76].

Before the sale took place the judgment debtor or any person whose interests were affected by the sale may pay money into Court[77]. But it was an error on the part of the Court to accept money from any person without first of all deciding whether he had in the holding any interest voidable by the sale[78]. When any person, whose interests were affected by the sale of the holding advertised for sale in execution of a decree for arrears of rent, paid into Court the amount requisite to prevent the sale -

(a) the amount so paid by him was deemed to be a debt bearing interest at twelve per centum per annum and secured by a mortgage of the holding to him;

(b) his mortgage took priority of every other charge on the holding other than a charge for arrears of rent; and

(c) he was entitled to possession of the holding as

---

76. The Bengal Tenancy Act, 1885, sec.170(2).
77. Ibid, sec.170(3).
78. Gobinda v. Chand (1912) 17 C.W.N. 602 at 604.

mortgagee of the tenant and to retain possession of it as such until the debt, with the interest due thereon, had been discharged[79].

The decree holder might bid for or purchase the holding without the permission of the Court[80] but the judgment debtor could not bid for or purchase a holding so sold[81]. When a judgment debtor purchased by himself or through another person a holding so sold, the Court might, if it thought fit, on the application of the decree holder or any other person interested in the sale, set aside the sale[82].

When a holding was sold for arrears of rent, the judgment debtor or any person whose interests were affected by the sale might, at any time within 30 days from the date of the sale, apply to the Court to have the sale set aside on his depositing in Court (a) for payment to the decree holder, the amount recoverable under the decree with costs and (b) for payment to the auction purchaser, as penalty a sum equal to five per cent of the purchase money, but not less than one rupee[83]. The

---

79. The Bengal Tenancy Act, 1885, sec.171(1).
80. Ibid, sec.173(1).
81. Ibid, sec.173(2).
82. Ibid, sec.173(3).
83. Ibid, sec.174(1).

deposit had to be made strictly within the time allowed by law; the Court had no power to extend the time[84]. But if the judgment debtor was prevented by an act of Court from depositing the money within the sepcified period, he might do so at the first opportunity after the expiry of that period, for an act of Court can not prejudice a man (actus curiae neminem gravabit)[85]. Thus if the Court was closed on or before the last day of the period limited, he might pay the said sum into Court on the first day the Court reopened[86]. A conditional deposit was not sufficient[87]. It was essential that the deposit should be such that the decree holder and the purchaser might withdraw it at once[88].

Where no application was made for setting aside the sale within 30 days from the date of the sale or where such application was made but disallowed, the Court made an order confirming the sale and thereupon the sale became absolute[89]. Even after the order of

---

84. Raghubar v. Jadunandan (1911) 16 C.W.N. 736.
85. Akbar v. Sukhdeo (1911) 13 C.L.J. 467 at 470.
86. Shooshee v. Gobind (1890) I.L.R. 18 Cal.231.
87. Dulhin v. Bansidhar (1911) 16 C.W.N. 904.
88. Shakoti v. Maharaja (1896) 1 C.W.N. 132; Rahim v. Nundo (1887) I.L.R. 14 Cal. 321.
89. The Bengal Tenancy Act, 1885 sec.174A(1).

confirmation had been passed, the decree holder, the judgment debtor or any other person whose interests were affected by the sale, might, at any time within six months from the date of the sale, apply to the Court to set aside the sale on the ground of material irregularity or fraud in publishing or conducting the sale[90]. Where such an application was made and allowed, the order of confirmation of sale was deemed to be cancelled[91]. But no sale could be set aside on any such ground unless (a) the Court was satisfied that the applicant had sustained substantial injury by reason of such irregularity or fraud and (b) the applicant had either deposited the decretal amount or satisfied the Court that no such deposit was necessary[92]. An appeal lay against an order setting aside or refusing to set aside a sale[93].

The right to appeal against a rent decree and proceedings in execution of a rent decree was to a certain extent restricted by a special provision of law in section 153 of the Bengal Tenancy Act. Under that section an appeal did not lie from any decree or order

---

90. Ibid, sec.174(3).
91. Ibid, sec.174A(5).
92. Ibid, sec.174(3), Proviso.
93. Ibid, sec.174(5).

passed, whether in first instance or on appeal in any suit instituted by a landlord for the recovery of rent where (a) the decree or order was passed by a District Judge, Additional Judge or Subordinate Judge and the amount claimed in the suit did not exceed one hundred rupees, or (b) the decree or order was passed by any other judicial officer specially empowered by the High Court[94] to exercise final jurisdiction and the amount claimed in the suit did not exceed fifty rupees. The object of this provision was to prevent "protracted litigation in cases of small value not affecting any permanent interests"[95]. But an appeal lay if in either case the decree or order decided (a) a question relating to title to land or to some interest in land as between parties claiming adversely to each other or (b) a question of a right to enhance or vary the rent of a tenant, or (c) a question of the amount of rent annually payable by a tenant[96]. But the regularity of the proceedings

---

94. The words "High Court" were substituted for the words "Provincial Government" (which were substituted for the words "Local Government" by paragraph 4(1) of the Government of India order, 1937) by sec.32 of the Bengal Tenancy (Amendment) Act, 1938.
95. Shyama v. Debendra (1900) I.L.R. 27 Cal. 484 at 487.
96. The Bengal Tenancy Act, 1885, sec.153.

or a sale in execution of a decree for arrears of rent was not a question relating to title to land or an interest in land, as between parties having conflicting claims thereto[97]. The bar to an appeal under that section, therefore, depended on two facts[98]: (a) the amount of the claim in the suit, and (b) the nature of the decree made in the action. The words "amount claimed" meant not merely the rent claimed but the whole amount claimed in the suit including rent and interest[99]. Where, therefore, the amount of rent was below Rs 100 but with interest exceeded that sum, it was held[1] that a second appeal was not barred. The word 'suit' in section 153 of the Act included all proceedings in execution of the decree made in the suit[2]. Therefore no second appeal lay against an order made in the course of execution, unless it fulfilled the same conditions[3]. The word 'order' in the section meant not merely a final order but an interlocutory orders, such as an order of remand. Therefore, an appeal from an order of remand in an action for rent for

---

97. Ibid, sec.153, Explanation.
98. M. Finucane and Ameer Ali, op. cit., p.627.
99. Behary v. Bhutnath (1898) 3 C.W.N. 214; Tarini v. Kedar (1928) 33 C.W.N. 126 F.B.
1. Behary v. Bhutnath (1898) 3 C.W.N. 214.
2. Shyama v. Debendra (1900) I.L.R. 27 Cal. 484 at 486-87.
3. Ibid, p.484.

less than Rs 100 was barred, unless the order determined any of the questions mentioned above[4].

Attachment and sale of a holding for arrears of rent. - Before the enactment of the Bengal Tenancy (Amendment) Act, 1940 a landlord seeking to execute a decree obtained by him for arrears of rent was not restricted, in the first instance, to a sale of the defaulting holding; he was at liberty to execute it in the ordinary manner against the person[5] and other property of the tenant[6] under the general law of procedure as laid down in Civil Procedure Code, 1908[7]. But since the insertion of section 168A by the amending Act of 1940, a landlord could not proceed in execution against the properties, movable or immovable, of a raiyat other than the holding to which the rent decree related. Clause (a) of sub-section (1) of that section provided as follows:-

"168A(1) Notwithstanding anything contained elsewhere in this Act, or in any other law, or in any contract -

---

4. Gagan v. Casperz (1897) 4 C.W.N. 44; Batasu v. Jaiti (1899) 3 C.W.N. LXii; Sashi v. Denomoyee (1916) 34 I.C. 301.
5. Bhabani v. Pratap (1904) 8 C.W.N. 575.
6. Shib v. Vakai (1906) I.L.R. 33 Cal. 601 at 605; Sailaja v. Gyani (1912) 18 C.L J. 29.
7. The Civil Procedure Code, 1908; sec.51.

(a) a decree for arrears of rent due in respect of a tenure or holding, whether having the effect of a rent decree or money decree, ... shall not be executed by the attachment and sale of any movable or immovable property other than the entire tenure or holding to which the decree..... relates."

Section 51 of the Civil Procedure Code, 1908 provides for execution of a decree not only by attachment and sale of the judgment debtor's property but also by his arrest and detention in prison and these other modes of execution were not affected by sec.168A(1). It was held in Bahadur v. Sanyasi[8] that this section did not prohibit or affect any mode of execution other than attachment and sale of the judgment debtor's property and therefore did not bar his arrest. In that case Henderson J. observed:-

"Under section 51(b) of the Code of Civil Procedure the Court may order execution of the decree by attachment and sale of any property. This right is cut down by sec.168A of the Bengal Tenancy Act. To say that other modes of execution, which are not referred to in the section, are also prohibited, one must read into it something which is not there".[9]

---

8. (1943) 47 C.W.N. 287.
9. Ibid, p.288.

Difference between rent-decree and money-decree. - A decree for payment of any debt to the plaintiff was called a money decree in the Civil Procedure Code, 1908. A sale of the judgment-debtor's property in execution of such a decree entitled the purchaser only to the right, title and interest of the judgment-debtor in the property sold[10]. That is to say, the ordinary rule of caveat emptor applied. The purchaser took the property with all the risks and defects in the judgment-debtor's title. That remedy being inadequate for the decree-holder landlord, the Bengal Tenancy Act, 1885 created a statutory charge for arrears of rent in section 65[11] in the case of tenants specified therein. According to that section a sale of a holding in execution of a rent-decree passed the holding itself to the purchaser and not merely the right, title and interest of the judgment-debtor tenant. If a landlord wanted the benefit of these special provisions he had to follow strictly the procedure laid down in the Act[12].

To create the right to the benefits of a rent-decree it was necessary to comply with the following

---

10. Umesh v. Gour (1906) 10 C.W.N.1042.
11. Infra, pp. 555-56.
12. Raja Banbehari v. Ketterpal (1911) 16 C.W.N. 259 at 262.

conditions; if any of them were not observed, the decree would only operate as a money-decree and only the interest of the tenant would pass at a court auction. Firstly, the decree had to be one for the recovery of rent within the meaning of sec.3(13) of the Act, which defined rent as "whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant." Under that clause the two essential characteristics of rent which differentiated it from other forms of debt were:- (a) that it was due for the use and occupation of the land and (b) that it was payable to the person under whom the land was held. Secondly, the plaintiff must hold the position of the landlord to the defendant from the date of the institution of the suit up to the date of sale[13]. If a landlord obtained a decree for arrears of rent for a period before he parted with his interest, the decree could only be executed as a money decree[14]. Similarly a decree obtained by a landlord against persons who had ceased to be his tenants could not be called a rent decree[15].

---

13. Krishnapada v. Manada Sundari (1932) 36 C.W.N. 518 S.B.
14. Ibid.
15. Jitendra v. Manmohan (1930) 34 C.W.N. 821 at 838.

It was necessary that the defendant should be a tenant at the date of the decree and not merely at the date of the institution of the suit[16]. A decree obtained by ignoring the transferee of an occupancy holding was not a rent decree[17]. Thirdly, it was necessary that the decree should have been passed in a suit instituted by the proper party i.e. either by the sole landlord or the entire body of co-sharer landlords or by one or more co-sharers according to the procedure laid down in section 148A[18] of the Act. Fourthly, the decree must have been obtained against proper parties; it should have been brought either (a) against the sole tenant or (b) against the entire body of co-tenants or (c) one or more co-tenants, who had been permitted by other co-tenants to represent them in their transactions with the landlord[19].

Before the Bengal Tenancy (Amendment) Act, 1928 a decree obtained for arrears of rent in respect of more than one tenancy was not a decree for rent[20]; it could not be executed as a rent-decree, only as a money

---

16. Official Trustee v. Purna (1930) 34 C.W.N. 702 at 706.
17. Maharaj Bahadur v. Nari Mollani (1936) 40 C.W.N. 683.
18. Supra, p. 527.
19. The Bengal Tenancy Act, 1885, sec.146A.
20. Bipradas v. Rajaram (1909) 13 C.W.N. 650.

decree under the Civil Procedure Code[21]. But under section 144(2), inserted by the Amending Act of 1928, a landlord might institute one suit in respect of several tenancies under certain conditions but separate decrees had to be passed in respect of each tenancy and the decrees had to be separately executed[22]. That section ran as follows:-

"144.(2). A landlord may institute one suit in respect of the rent of more than one tenancy, if the tenancies, in respect of the rent of which the suit is brought, are held in similar right and equal status by the same tenant under him:

Provided that-

(i) the claim in respect of each tenancy shall be stated separately in the plaint;
(ii) separate decrees shall be made in respect of each tenancy;
(iii) the costs of the suit shall be apportioned by the Court in respect of each tenancy; and
(iv) separate Court-fees shall be levied on the plaint in respect of the claim on account of each tenancy."

Who could bring a holding to sale for arrears of rent. - Section 65 of the Bengal Tenancy Act, 1885 provided that "where a tenant is a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy

---

21. Rash Mohini v. Debendra (1911) 16 C.W.N. 395; Mulluk v. Satish (1909) 14 C.W.N. 335; Hridoynath v. Krishna (1907) I.L.R. 34 Cal. 298.
22. Sarat v. Dharmadas (1937) 42 C.W.N. 375 at 377.

raiyat, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon." In Forbes v. Maharaj Bahadur[23] their Lordships of the Judicial Committee of the Privy Council observed that, according to this section, the right to bring a holding to sale existed so long as the relationship of landlord and tenant existed. Jenkin C.J., observed that the result of that case was that "the sale of a holding is possible only so long as the rent is a first charge thereon. But the rent remains a first charge only so long as the relation of landlord and tenant subsists."[24] So if the landlord ceased to be a landlord at any time before the sale, he might execute his decree as a "money decree" under the Civil Procedure Code, 1908 but not as a "rent decree" under section 65 of the Act[25]. This conclusion was arrived at by gradual stages and the history of the judicial decisions in this regard may be traced: In

---

23. (1914) I.L.R. 41 Cal. 926 at 939 P.C.; Also Krishnapada v. Manada Sundari (1932) 36 C.W.N. 518 S.B.
24. Ram Prasad v. Ram Charan (1914) 27 I.C. 601 at 602; Krishnapada v. Manada Sundari (1932) 36 C.W.N. 518 S.B.
25. Forbes v. Maharaj Bahadur (1914) I.L.R. 41 Cal.926 at 940 P.C.

Hem Chunder v. Monmohini[26] the interest of the landlord had ceased after he had obtained a decree for rent in respect of a saleable under-tenure; it was ruled that he could not thereafter bring the tenure itself to sale in execution of a decree in conformity with the provisions of the Bengal Tenancy Act. In Chhatrapat v. Gopi Chand[27] the landlord lost his interest after the institution of the suit for arrears of rent but before the decree was made in his favour; it was held that the decree so made had all the characteristics of a rent decree under the Act. In Srimant v. Mahadeo[28] the landlord lost his interest before the institution of the suit for arrears of rent by reason of the expiry of the term of his lease; it was held that he could, in execution of his decree for rent, sell only the right, title and interest of the tenant, as existing at the time of the sale. In this state of the authorities the case of Khetrapal v. Kritarthamoyi[29] came up before a Full Bench in which the landlord parted with her interest after she had obtained

---

26. (1894) 3 C.W.N. 604.
27. (1899) I.L.R. 26 Cal. 750.
28. (1904) I.L.R. 31 Cal.550.
29. (1906) I.L.R. 33 Cal. 566 F.B., overruling Hem Chunder v. Mon Mohini (1894) 3 C.W.N. 604.

a decree for arrears of rent but before she applied to execute it; it was held that the decree was capable of execution as a rent decree at her instance. In this case Maclean C.J., observed that "if at the time when a suit is instituted and the decree is made, the plaintiff is still the landlord, the fact that subsequently he sells his landlord's interest does not prevent him from obtaining the benefit of section 65 of the Act." Then came the case of Maharaj Bahadur v. Forbes[30] in which the landlord lost his interest before the institution of the suit for arrears of rent and consequently was not the landlord at the time when the decree was obtained or the application for execution was made; it was held by the High Court that the decree operated as a decree for rent. But on appeal the Judicial Committee reversed the decision of the High Court[31]. In this state of things there came before the High Court the case of Kumar Prafulla v. Nosibanness[32] in which the plaintiffs as ijaradars brought a suit for arrears of rent and obtained a decree while they were ijaradars, But they applied for execution of the decree under the special

---

30. (1908) I.L.R. 35 Cal. 737.
31. Forbes v. Maharaj Bahadur (1914) I.L.R. 41 Cal. 926 P.C.
32. (1916) 24 C.L.J. 331 S.B.

provisions of the Bengal Tenancy Act as a rent decree after their rights as ijaradar landlords had ceased. The question arose whether the Privy Council decision in Forbes' Case[33] had the effect of overruling the Full Bench decision in Khetrapal's Case[34]. A Special Bench was constituted for deciding that question but the reference proved abortive, as it transpired that the second appeal itself was not maintainable. Later came the case of Syedunnessa v. Amiruddi[35], in which the decree-holder continued to be the sole landlord at the date of the application for execution of the decree and when he took the necessary steps for the sale of the defaulting under-tenure in his capacity as landlord but before the sale he had ceased to be the sole landlord; it was held that the effect of the execution sale was to pass the under-tenure to the purchaser. It was also said that in Forbes' Case[36] the Privy Council did not overrule the Full Bench decision in Khetrapal's Case[37]. Similarly it was observed in Manindra v. Ashutosh[38]:

---

33. (1914) I.L.R. 41 Cal. 926 P.C.
34. (1906) I.L.R. 33 Cal. 566 F.B.
35. (1917) I.L.R. 45 Cal. 294.
36. (1914) I.L.R. 41 Cal. 926 P.C.
37. (1906) I.L.R. 33 Cal. 566 F.B.
38. (1917) 21 C.W.N. 1132 at 1133.

"It can not be said that the Privy Council overruled the Full Bench decision to which they referred and distinguished from the case before them. They laid down however certain principles which, if applicable fully and in all cases, are, as pointed out in Kumar Prafulla v. Nosibannessa[39], inconsistent with those upon which the Privy Council judgment proceeds. But every judgment must be read as applicable to the particular facts proved and the general expressions used must be considered to be governed and qualified by the particular facts of the case in which such expressions are found. A case is an authority for what it decides and not for what may seem to follow logically from it. If the Privy Council had considered the Full Bench decision to be erroneous, they would have doubtless said so. The facts of the case before them were wholly different, as the relationship of landlord had, in the Privy Council Case, ceased before the suit was brought". In Dwarka v. Atul[40] it was held that the decision in Forbes' Case[41] did not decide anything more than that, by virtue of the provisions of section 65 of the Act, a person, who had

---

39. (1916) 24 C.L.J. 331 S.B.
40. (1919) I.L.R. 46 Cal. 870.
41 (1914) I.L.R. 41 Cal. 926 P.C.

ceased to be the zemindar at the time he sued for rent, could not enforce his decree as a rent decree in accordance with those provisions. In Rahimuddi v. Chadem[42] the landlord put his decree into execution after he had sold away his own interest; it was held, following the decision of the Judicial Committee in Forbes' Case[43], that what passed by the sale in such execution was only the right, title and interest of the judgment-debtor. After these conflicting decisions the matter came up before a Special Bench in Krishnapada v. Manada Sundari[44], where the landlord, after obtaining a decree for arrears of rent, parted with his interest and then applied for execution of the decree; it was held that the sale did not pass the holding and that, in order to entitle a person to the benefit of a rent sale, the landlord's interest must remain vested in him from the date of institution of the rent suit till the date of the sale. That decision finally set at rest all controversy in the matter.

---

42. (1928) 32 C.W.N. 1060.
43. (1914) I.L.R. 41 Cal.926 P.C.
44. (1932) 36 C.W.N. 518 S.B. overruling Khetrapal's Case (1906) I.L.R. 33 Cal. 566 F.B.; Manindra v. Ashutosh (1917) 21 C.W.N. 1132; and Syedunnessa v. Amiruddi (1917) I.L.R. 45 Cal.294.

The position of the assignee of arrears of rent and of a rent decree. - When arrears of rent (apart from the landlord's interest in the land) were assigned to a third party, they were in the hands of the assignee no more than ordinary debts and such an assignee could not claim the benefit of section 65 of the Act. In other words suits for back rents by an assignee were not rent suits under the Act, for rent was defined as "whatever is lawfully payable by a tenant to his landlord"[45]. There was no privity of contract between the assignee and the tenant; the relationship of landlord and tenant did not exist. Consequently a decree obtained by the assignee of rent against the tenant for arrears of rent was not a decree for rent[46]. Such a decree had only the status of a money-decree under the Civil Procedure Code, 1908.

According to the earlier view a ~~bare~~ mere assignee of a decree for arrears of rent could not execute such a decree as a rent decree under the Bengal Tenancy Act; his remedy was to execute the decree as a money decree under the Civil Procedure Code[47]. In later cases[48],

---

45. The Bengal Tenancy Act, 1885, sec.3(13).
46. Mahendra v. Koilash (1900) 4 C.W.N. 605 at 606.
47. Karunamoyi v. Surendra (1898) I.L.R. 26 Cal.176; Nagendra v. Bhuban (1901) 6 C.W.N. 91.
48. Sudhanya v. Gouranga (1917) 41 I.C. 542; Bijonbala v. Mathura (1930) 35 C.W.N. 51; Rahimuddi v. Jogendra (1931) 54 C.L.J. 596; Gonendra v. Ramkishore (1933) 37 C.W.N. 901.

however, it was held that such an assignee could not make an application to execute the decree even as a simple money decree under the Civil Procedure Code, in view of the provisions of section 148(o)[49] of the Bengal Tenancy Act which provided that "notwithstanding anything contained in (rule 16 of Order XXI in Schedule 1 to the Code of Civil Procedure, 1908)[50] an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him". This exception was introduced in order to prevent the landlord, who had failed to realise his dues, from assigning his decree to some speculator and so causing harassment and trouble to the tenant[51]. The policy of the law was not to encourage the sale of a decree for arrears of rent apart from the landlord's interest[52]. In Forbes' Case[53] their Lordships of the

---

49. This clause was formerly numbered (h).
50. The words and figures within bracket was substituted for the words and figures "section 232 of the Code of Civil Procedure" by section 93(12) of the Bengal Tenancy (Amendment) Act, 1928.
51. Rahimuddi v. Jogendra (1931) 54 C.L.J. 596 at 598.
52. Gopendra v. Ramkishore (1933) 37 C.W.N. 901 at 906.
53. (1914) I.L.R. 41 Cal. 926 at 939 P.C.; Also quoted in Bijonbala v. Mathura (1930) 35 C.W.N. 51 at 52.

Judicial Committee observed that "the right to apply for the execution of a decree for arrears was attached to the status of the decree-holder qua landlord". It was, therefore, settled that a ~~bare~~ mere assignee of a decree for rent could not execute the decree at all, whether as a rent-decree or as a money-decree. "The result," said Mitter J., "is regrettable.... but we have to administer the law as we find it."[54] The word 'assignee' as used in section 148(o) of the Act did not include a trustee who executed a decree under an assignment which was not for his own benefit but for the benefit of the heirs of the assignor[55].

Section 148(o) did not prohibit the decree-holder from assigning his decree; nor did it prohibit anyone from accepting an assignment of the decree, so long as satisfaction of the decree could be obtained out of Court. All that it prohibited was an application for enforcement of the decree by an assignee and that was a matter of procedure[56]. If a payment was made to an assignee, the decree was satisfied and there was nothing in the clause to prevent it[57]. "The effect of

---

54. Gopendra v. Ramkishore (1933) 37 C.W.N. 901 at 906.
55. Chhatrapat v. Gopichand (1899) I.L.R. 26 Cal 750 at 760.
56. Soshi v. Gogan (1894) I.L.R. 22 Cal. 364 at 373.
57. Rajani v. Ramnath (1914) 19 C.W.N. 458 at 461.

the assignment is not to extinguish the liability of the judgment debtor under the decree; in the first place, it is plain that if at any time before the decree was extinguished by limitation, the assignee of the decree obtained an assignment of the landlord's interest in the land, the bar would be removed and he would be in a position to enforce the decree. In the second place, it is equally clear that if the assignee transferred the decree to the assignor, the latter would be in a position to enforce the decree. The true position is this that the judgment debtors were liable under the decree, but the person who held the decree was not in a position to apply to the Court for execution till a certain contingency happened"[58].

Sec. 2. Recovery of arrears of rent by distraint

In England distress was one of the most ancient and effective remedies for the recovery of rent. "It is the taking", said Woodfall, "without legal process of cattle and goods as a pledge, to compel the satisfaction of a demand, the performance of a duty, or

---

58. Ibid, p.560.

the distress of an injury - the act of taking, the thing taken, and the remedy generally, having been called a distress".[59] According to the same authority "the power of distress appears to have been derived from the ancient feudal law and to have been substituted for a forfeiture of the tenant's estate. Originally it was not so much a remedy as the means of obtaining one; for the chattels distrained remained only as a pledge in the hands of the distrainer,[60] but could not be sold; and, as Blackstone observed, 'although such a distress put the owner to inconvenience, and was therefore a punishment to him, yet if he continued obstinate, and would make no satisfaction it was no remedy at all to the distrainer.'. This power, however, became the means of great oppression in the hands of the Barons, and continual enactments were passed..... for the protection of tenants, but the current of legislation afterwards took a turn, and was for a very

---

59. Woodfall, Law of Landlord and Tenant (London: Sweet and Maxwell, 1902, 17th Ed.) p.468; Also Edgar Foa, Outlines of the Law of Landlord & Tenant, Six Lectures delivered at the request of the Council of Legal Education (London: Stevens & Haynes Law Publishers, Bell Yard, Temple Bar, 1913) p.42.
60. Ibid. p.42.

long time wholly for the benefit of landlords rather than of tenants; a step in favour of tenants, however, was taken in 1871, by the Act which protects the goods of lodgers from distress, another step in 1872, by the Act which protects railway rolling stock, a further very considerable step - in relation to agricultural holdings only - by the Agricultural Holdings Act, 1883 and a still further step by the Law of Distress Amendment Act, 1888, which extends to all holdings some of, but not all, the enactments of the Agricultural holdings Act, 1883."[61] Notwithstanding a distress, the property in the chattels or goods distrained remains vested in the tenant or owner thereof until they are sold under the distress[62]. The landlord or person distraining has no property in the goods distrained, nor even the possession thereof[63]. As a general rule, all goods and chattels which are found upon the demised premises may be distrained for rent, whether they be the effects of a tenant or of a stranger; the reason being that the landlord has a lien on them in respect of the place in which they are found, and not in

---

61. Woodfall, op. cit., pp.469-70.
62. Ibid. p.476.
63. Ibid.

respect to the person to whom they belong[64].

Distraint was unknown in India till it was introduced by the East India Company. Its servants considered the English law of distress to be the most convenient and effective mode for realization of arrears of rent from the raiyats. According to the Rent Law Commissioners,[65] distraint is "an offset of English law", which was "originally introduced into this country by Regulation XVII of 1793, which empowered certain specified landlords to distrain and sell the crops and products of the earth of every description, the grain, cattle, and all other personal property (whether found in the house or on the premises of the defaulter or of any other person) belonging to their tenants. This continued to be the law until 1859",

Under the Bengal Rent Act, 1859 which repealed all provisions of the Regulations relating to distraint, there was no substantial change effected in this branch of law except that it expressly limited the power of distraint to the produce of the land on account of which the rent was due[66]. Those provisions were re-enacted in the Bengal Act, 1869[67]. Under section 112 of the Bengal

---

64. Ibid. p.496
65. The report of the Rent Law Commission, 1880, para 4.
66. The Bengal Rent Act, 1859, sections 112-145; The report of the Rent Law Commission, 1880, para 4.
67. The Bengal Act, 1869, sections 68-101.

Rent Act, 1859 and section 68 of the Bengal Act, 1869 it was provided that "the produce of the land is held to be hypothecated for the rent payable in respect thereof; and when an arrear of rent as defined in section 21[68] of this Act is due from any cultivator of land, the zemindar, lakhirajdar,[69] farmer, dependent talookdar, or other person entitled to receive the rent of such land immediately from the actual cultivator thereof, instead of bringing a suit for the arrear as thereinbefore provided, may recover the same by distraint and sale of the produce of the land on account of which the arrear is due, under the following rules: Provided always that, when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given shall not be liable to distraint. Provided also that no co-sharer in a joint estate, dependent talook, or other tenure in which a division of lands has not been made amongst the sharers, shall exercise the power of distraint otherwise than through a manager authorised to collect the rents of the whole estate, talook, or tenure on behalf of all the sharers in the same." Section 21 of

---

68. This section corresponds to sec. 2**b** of the Bengal Rent Act, 1859.
69. 'lakhirajdar' = la means non, khiraj, revenue i.e. the holder of an estate free from revenue.

the Bengal Act, 1869, here referred to, defined an arrear of rent as "any instalment of rent which is not paid on or before the day when the same is payable according to the pottah or engagement, or if there be no written specification of the time of payment, at or before the time when such instalment is payable according to established usage".

Distraint could not be made for any arrear which had been due for a longer period than one year, nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless a written engagement for the payment of such excess had been executed by the cultivator[70]. The power of distraint could be exercised by managers under the Court of Wards, surbarakars and tehsildars[71] of estates held khas, and other persons lawfully entrusted with the charge of the landed property, and also by agents, authorised by power of attorney[72]. Standing crops and other ungathered products of the earth and crops or other products when reaped or gathered and deposited in any threshing floor or place for trading out grain or the like, whether in

---

70. The Bengal Rent Act, 1859, sec.113; The Bengal Act, 1869, sec.69.
71. Surbarakars & Tehsildars = They are persons engaged in collection of rent or revenue.
72. The Bengal Rent Act, 1859, sec.114; The Bengal Act, 1869, sec.70.

the field or within a homestead, could be distrained by persons authorised to do so. But no such crops or products other than the produce of the land in respect of which an arrear of rent was due, or of land held under the same engagement, and no grain or other produce after it had been stored by the cultivator and no other property whatever could be distrained under the Act[73]. The defaulter had to be served before or at the time of distraint, with a written demand for the amount of the arrear, together with an account showing the grounds on which the demand was made[74]. Standing crops and other ungathered products could be reaped and gathered by the tenant, or, in default of his doing so, the distrainer could reap and gather them; crops or products, which from their nature did not admit of being stored, could be sold, before they were cut or gathered; but in such case the distraint had to be made at least twenty days before the time when the crops or products or any part thereof would be fit for cutting or gathering[75]. A

---

73. The Bengal Rent Act, 1859, sec.115; The Bengal Act, 1869, sec.71.
74. The Bengal Rent Act, 1859, sec.116; The Bengal Act, 1869, sec.72.
75. The Bengal Rent Act, 1859, sec.118; The Bengal Act, 1869, sec.74.

distress had to be withdrawn if before the date of sale the owner of the property tendered payment of the arrear and of the expenses of the distress[76]. A detailed procedure was prescribed for bringing the distrained property to sale, with penal provisions for unlawful distraint as well as for unlawful resistance[77]. Under the law, as it stood prior to the Bengal Tenancy Act, 1885, the landlord could distrain without recourse to the Civil Court or the Collector, but he could not bring to sale "the crops or products" distrained without the assistance of the Civil Court Amin[78].

The Rent Law Commission, 1880, proposed to abolish the law of distraint altogether[79]. But this proposal did not find favour in its entirety with the legislature; they considered it expedient to preserve the power of distraint but subject to considerable restrictions and limitations. The nature of these restrictions may be gathered from the following extract from the Statement of objects and reasons of the Bengal

---

76. The Bengal Rent Act, 1859, sec.121; The Bengal Act, 1869, sec.77.
77. The Bengal Rent Act, 1859, sections 119-145; The Bengal Act, 1869, sections 75-101.
78. M. Finucane & Ameer Ali, op. cit., p.543; Amin = an officer of the Court.
79. Para 4 of the report.

Tenancy Bill, 1883[80]:-

"The modified power of distraint, which it is now proposed to allow, can be used by any landlord of a raiyat or under-raiyat for the recovery of an arrear of rent, which has not been due for more than a year. It extends, as a rule, to all the produce of the holding, including what may have been grown by, and be the property of, a sub-lessee of the tenant, and it may be exercised though the produce has been stored, provided it has not passed out of the possession of the cultivator. The landlord can not himself interfere with the produce to be distrained, but must apply to a Civil Court to distrain it. The Court, after a brief examination of the case, will depute an officer to distrain and sell the produce, and nothing will stay the sale except the payment into Court of the amount of the demand. Any sum paid into Court will be retained for one month, with a view to the possibility of the owner of the distrained property claiming compensation as for a wrongful distraint, and on the expiration of that period it will be paid to the landlord".

---

80. para 110 = Selections, p.211.

Finucane and Ameer Ali observed that "the most important modification effected in the old law by section 121 of the Bengal Tenancy Act is that no distraint can be effected now (save in cases under section 141) without the intervention of the Civil Court"[81]. Under section 141 of the Act the Local Government was empowered to authorise the landlord to distrain by himself or his agent when it was of opinion that in any local area or in any class of cases it would be impracticable for a landlord to realize his rent by an application to the Civil Court under Chapter XII dealing with distraint.

Under section 121 of the Bengal Tenancy Act, 1885 it was enacted that "when an arrear of rent is due to the landlord of a raiyat or under-raiyat, and has not been due for more than a year, and no security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court, requesting the Court to recover the arrear by distraining, while in the possession of the cultivator, - (a) any crops or other products of the earth standing or ungathered on the holding; (b) any crops or other products of the earth

---

81. M. Finucane & Ameer Ali, op. cit., p.543.

which have been grown on the holding, and have been reaped or gathered, and are deposited on the holding, or on a threshing-floor or place for treading out grain, or the like, whether in the fields or within a homestead." An application for distraint under that section could not be made by a proprietor or manager as defined under the Land Registration Act, 1876, or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear was due were registered under the provisions of that Act; nor could such application be made for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum was payable under a written contract or in consequence of a proceeding under the Bengal Tenancy Act or an enactment repealed by that Act; nor could such application be made in respect of the produce of any part of the holding which the tenant sub-let with the written consent of the landlord[82]. As it was necessary that the property distrained should be in the possession of the cultivator, under the earlier Rent Acts it was

---

82. The Bengal Tenancy Act, 1885, sec.121, Proviso.

held that a landlord could not distrain crops for arrears of rent from a person not in possession and who had not cultivated the crops[83]. A landlord could apply for distraint for the purpose of recovering the arrear of rent of the holding due for the preceding agricultural year, together with interest thereon at the rate of 12 p.c. per annum, but not for the recovery of damages, nor could he by one application apply for distraint for the rent of more than one holding[84]. It was obligatory that the application should set out certain particulars specified in the Act[85]. If there were several holdings on which distraint was to be effected a separate application for each was necessary[86]. The defaulter was entitled to a written demand for the arrear due and the costs incurred in making the distraint with an account exhibiting the grounds on which the distraint was made[87]. He was not prevented by reason of the distraint from reaping, gathering or storing any produce or doing any other act necessary for its due preservation[88]. The

---

83. Mohinee v. Ram Coomar (1864) W.R. Gape vol.(Act X)77.
84. Sheobarat v. Nawrangdeo (1901) I.L.R. 28 Cal.364.
85. The Bengal Tenancy Act, 1885, sec.122.
86. Sheobarat v. Nawrangdeo (1901) I.L.R. 28 Cal.364.
87. The Bengal Tenancy Act, 1885, sec.125(1).
88. Ibid. sec.126(1).

property distrained would remain in the charge of the distraining officer or of some other person appointed by him in this behalf[89]. If the demand with all costs of the distraint was not immediately satisfied, the distrained property was sold by public auction[90]. When the purchase money was paid in full, the officer holding the sale would give the purchaser a certificate describing the property purchased by him and the price paid[91]. The sale proceeds of every sale of distrained property were applied firstly towards payment of all costs of the distraint and sale and secondly to the discharge of the arrear for which the distress was made with interest thereon up to the date of sale; the surplus, if any, was paid to the person whose property was sold[92]. When an inferior tenant, on his property being lawfully distrained for the default of a superior tenant, made any payment for avoiding the sale thereof, he was entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he was not the defaulter, was in like manner entitled to deduct the amount so deducted from any rent payable by him to

---

89. Ibid. sec.126(3).
90. Ibid. sec.127(1).
91. Ibid. sec.133.
92. Ibid. sec.134.

his immediate landlord, and so on, until the defaulter was reached[93]. When land was sub-let and any conflict arose between the rights of a superior and of an inferior landlord who had distrained the same property, the right of the superior landlord would prevail[94]. In case of any conflict between an order for distraint and an order for the attachment or sale of the property which was the subject of the distraint the order for distraint would prevail[95]. Any person, whose property was wrongfully distrained under the Act, was entitled to institute a suit against the distrainer for the recovery of compensation[96]. In Hanuman v. Gobinda[97] it was held that a suit for compensation for illegal distraint was maintainable on the ground that the distraint was made in violation of the provisions of section 121 of the Act. In Jugdeo v. Padarath[98] the plaintiff sued to recover the amount paid by him to obtain the release of his crops, which the defendant had illegally distrained as the crops of a third person. It was objected that the plaintiff's brother had an interest in the holdings. The plaintiff's

---

93. Ibid. sec.137(1).
94. Ibid. sec.138
95. Ibid. sec.139.
96. Ibid. sec.140.
97. (1895) 1 C.W.N. 318.
98. (1897) I.L.R. 25 cal. 285 at 287.

brother was then added as a co-plaintiff, but after the expiry of the period of limitation. A decree was accordingly given to the plaintiff for half the amount of his claim. On appeal to the High Court it was urged (a) that under the provisions of section 140[99], the suit was not maintainable, because the distraint had been made on an application under section 121; (b) that the whole claim ought to have been held barred by limitation. The decree was, however, sustained. In delivering the judgment of the Court Trevelyan and Stevens J J. observed:-

"We think there is nothing in section 140 to exclude an action of this kind in a case like that before us in which the landlord is found to have abused his power of distraint by distraining the crops which belong to the tenant on the pretence that they belong to another person in collusion with himself. There has been an invasion of the rights of the tenant, for which he is entitled to a remedy, and if the case is not one of the kind contemplated by section 140, he is not deprived, by the provisions of that section of the

---

99. Section 140 of the Bengal Tenancy Act, 1885 provided: "No appeal shall lie from any order passed by a Civil Court under this chapter; but any person whose property is distrained on an application made under section 121, in any case in which an application is not permitted by that section, may institute a suit against the applicant for the recovery of compensation".

ordinary right of action which any person who suffers from a tortious act has against the tort-feasor".[1] On the point of limitation it was held that there was nothing to prevent the plaintiff from suing alone for compensation for the illegal distraint, as far as he was injuriously affected by it, and in this view his claim, which was certainly brought in time, was not barred by the subsequent addition of his brother as a co-plaintiff[2]. The period of limitation for a suit for compensation was one year from the date of the wrongful seizure[3].

The law of distraint as a mode for the recovery of arrears of rent was repealed by the Bengal Tenancy (Amendment) Act, 1928. The object of the repeal was that it was not necessary in the province where it was rarely used, and then probably only as a means of oppression[4].

Sec. 3. Recovery of arrears of rent by Certificate

The last method of realizing rent from a raiyat was by certificate. Formerly it was only used in Government estates and in estates under control of the

---

1. Jugdeo v. Padarath (1897) I.L.R. 25 Cal. 285 at 287.
2. Ibid. p.289.
3. The Indian Limitation Act, 1877 Art 28 or 29. Jagatjiban v. Sarat (1902) 7C.W.N. 728.
4. Notes on clause 88 of the Bill of 1928 = The Calcutta Gazette dated July 12, 1928, part IV, p.102.

Court of Wards but The Western Bengal Tenancy (Amendment) Act, 1907 and the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 introduced this system into private estates, under certain conditions. The new section 158A of the above Acts contained provisions for the recovery of arrears of rent under the Public Demands Recovery Act, 1895. The main conditions of the new system, as provided by that section, were (a) the preparation and maintenance of record-of-rights in the area in which the land was situate and (b) sanction of the local Government[5]. Sub-sec.(1) of section 158A ran as follows:-

> "Any landlord whose land is situate in an area for which a record-of-rights has been prepared and finally published, and in which such record is maintained, may apply to the Local Government, through the Collector of the district in which his land is situate, for the application of the procedure prescribed by the Bengal Public Demands Act, 1895, to the recovery of the arrears of rent which he alleges are, or may accrue, due to him for lands in such area".

This novel system of recovering rent by the Certificate was made available to the entire body of landlords, including co-sharer landlords who made separate collections of rent[6]. The introduction of the new system

---

5. The Bengal Tenancy Act, 1885, sec. 158A, sub-sec.(1) as introduced by the Amending Acts of 1907 & 1908.
6. The Bengal Tenancy Act, 1885, sec.158A, sub-sec.8; The Bengal Public Demands Recovery Act, 1913, sec.60(9).

of recovering rent was encouraged by the Select Committee of the Bill of 1906[7]. In modifying one of the clauses of the Bill the Committee recommended that "in order to make the privilege of being able to recover rent by the certificate procedure of real value, the certificate should have the effect of a decree in a rent suit"[8]. Accordingly it was provided in sub-section (5) of section 158A of the Act that "any such certificate shall, as regards the remedies for enforcing the same and so far only, have the force and effect of a decree of a Civil Court passed in a suit for the recovery of rent and the provisions of chapter XIV[9] shall, so far as may be practicable, be applicable to all proceedings for the execution of such certificate".

When the Bengal Public Demands Recovery Act, 1913 was enacted, section 60 of that Act substituted a new version of section 158A in the Bengal Tenancy Act. Sub-section (1) of the substituted section ran as follows:-

> 158A.(1) Any landlord (other than the Government) whose land is situate in an area for which a record-of-rights has been prepared and finally

---

7. The report of the Select Committee dated 6th March 1907, para 46 = The Calcutta Gazette dated 9th March, 1907, Part IV, p.11.
8. Ibid. para 12.
9. This chapter of the Bengal Tenancy Act, 1885 dealt with "sale for arrears under decree".

published, and in which such record is maintained, may apply to the local Government, through the Collector of the district in which his land is situate, for the application of the procedure prescribed by the Bengal Public Demands Recovery Act, 1913, to the recovery of the arrears of rent which he alleges are, or may accrue, due to him for lands in such area".

Sub-section (2) of section 158A provided that "the local Government may reject any such application, or may allow it subject to such terms and conditions as it may see fit to impose, and may at any time add to or vary any terms or conditions so imposed or withdraw its allowance of the application, without, in any of these cases, assigning any reason for its action". When the Bengal Tenancy (Amendment) Bill, 1928 was under discussion, Mr. J. N. Maitra, a member of the Bengal Legislative Council moved that for sub-sec.(2) the following be substituted:-

"The Local Government, if on enquiry, finds that the landlord maintains his copy of the record-of-rights and other records in the prescribed manner, it shall allow any such application, subject to such terms and conditions as it may see fit to impose or vary in terms and conditions so imposed, or withdraw its allowance of the application, but shall, in any of these cases, assign reasons for its action"[10].

That amendment was, by the leave of the Council, withdrawn and the amendment moved by the member in charge of the Bill to substitute sub-section (2) as enacted was

---

10. Bengal Legislative Council Proceedings, 1928, vol.XIX, No.2, p.924.

adopted in the Council. The new sub-section (2), under the Amending Act of 1928, provided as follows:-

"The Local Government shall specify the terms and conditions on which such applications may be allowed and shall allow any such application, when such terms and conditions are satisfied. Such terms and conditions may be added to or varied by the Local Government from time to time as may be necessary, and the Local Government may withdraw its allowance of the application if it appears that the terms and conditions are not being complied with".

The object of the amendment was thus explained by Sir P. C. Mitter, member-in-charge of the Bill:-

"Under the present law the right of granting permission for certificate procedure lies with the Government. Now the proposal of Babu J. N. Moitra, who has just withdrawn his amendment, was that when the landlord keeps his record, the landlord should, as a matter of right, be given the facility of certificate procedure. We object to that because the landlord's record may not be correct, but when the Government maintains the record, and the landlord pays for the keeping of it, we have no objection".[11]

The new sub-section (2) of section 158A of the Act took away the powers of the local Government to reject the landlord's application to recover rent by the

---

11. Bengal Legislative Council Proceedings, 1928, vol.XXX, No.2, p.925.

summary procedure, except for non-fulfilment of the terms and conditions imposed by it, whereas prior to the amendment such an application could be rejected without any reason whatsoever. Under the Amending Act of 1928 the local Government had in all cases to specify the terms and conditions on which recovery by certificate was to be allowed. The following terms were notified[12] by the Government for observance in respect of applications under section 158A of the Act:-

"1. One copy of the last finally published record-of-rights (called the maintenance copy) shall be revised and maintained at the expense of the applicant. This revision and maintenance will be done by the Government and in such manner as the Government may by rules from time to time direct.

"2. The estimated cost of such revision and maintenance during any year shall be paid by the applicant before the 1st November of that year. If the actual cost exceeds the estimate the balance shall be paid by the applicant within one month of demand by the Collector; and if there be a saving it will be refunded to him (or may be carried on to the next year's account if he so desires).

---

12. Notification No.4794 L.R. dated 12th March 1929 = The Calcutta Gazette dated March 21, 1929, part I, p.511.

"3. The maintenance staff shall be independent of the applicant's staff, but the latter shall co-operate and give all possible assistance in the maintenance proceedings. The applicant's staff shall give all available information regarding changes in tenants, transfers, amalgamations, or sub-divisions of tenancies, new settlements, arrangements made with tenants for alterations of rent in respect of alteration in area, cases in which non-occupancy raiyats have become settled raiyats, etc. They shall help in securing the attendance of tenants during the maintenance proceedings.

"4. The estate shall be managed with due regard to the legal rights of the tenants and in particular -

(a) no abwab or other illegal exaction under any denomination shall be realised by the applicant,

(b) the interest on arrears of rent shall not be demanded at a higher rate than provided for in section 67 of the Bengal Tenancy Act,

(c) the applicant shall keep a full and correct account of all amounts paid by the tenants,

(d) he or his authorised agent shall grant receipt forthwith for any amount paid by the tenant, and

(e) the Collector shall be satisfied that arrears barred by limitation are properly dealt with.

"5. The arrear accounts of the tenants shall be based on the rentals as recorded in the maintenance copy of the record-of-rights.

"6. The certificate procedure shall not be treated as the normal method of realising rents, but the applicant shall make proper arrangement of village kutcheries for local payment of rent by the tenants.

"7. The Collector or any other officer deputed by him for the purpose shall have the power to inspect the accounts of collection and arrears maintained by the applicant.

"8. The requisition for certificates shall ordinarily be filed within the first three months of the agricultural year, and shall include all the arrears claimed up to the end of the previous agricultural year which are not barred by limitation. Not more than one certificate shall be filed in respect of one tenancy within an agricultural year; and no damages under section 68 of the Act shall be claimed in a certificate.

"9. The certificates in which the names of the tenants or the annual rentals and other particulars

of the tenancy do not agree with the entries in the maintenance copy of the record-of-rights will not be accepted.

"10. There shall be no exceptional conditions affecting the relationship of landlord and tenant which render it inadvisable to grant the application.

"11. The privilege of the certificate procedure shall be withdrawn if it is found that any of these terms and conditions are not observed".

Under section 158B of the Bengal Tenancy Act, 1885 a holding would pass to the auction purchaser when it was sold in execution of a rent decree only. To ensure the same advantage to a purchaser of a holding sold in execution of a certificate the section was amended by section 61 of the Bengal Public Demands Recovery Act, 1913; the following provisions being added:-

"158B.(1) Where a tenure or holding is sold in execution of -
(a).....
(b).....
(c) a certificate for arrears of rent signed under the Public Demands Recovery Act, 1913 the tenure or holding shall, subject to the provisions of section 22[13], pass to the purchaser,.... if such certificate was signed on the requisition of, or in favour of, a sole landlord or the entire body of landlords".

---

13. See, pp.130, 132-136.

Though this section was repealed by the Bengal Tenancy (Amendment) Act, 1928 it was re-enacted in chapter XIIIA[14] as section 158AAA of the Act in exactly the same words as before. The object was thus explained in the notes on clauses[15] to the Bill of 1928:-

"The portion of sub-section (1) of section 158B which relates to certificates for arrears of rent has been transferred to the new section 158AAA and placed under chapter XIIIA".

The system of recovery of raiyats' rent by certificate was subject to criticism. Immediately after its introduction in 1907 in the Bengal Tenancy Act, 1885 it was criticised by an anonymous writer in a published article[16]. The system, however, continued till 1938 when it was abolished by the Bengal Tenancy (Amendment) Act of that year. The object of its repeal was thus explained by Sir B. P. Singh Roy, member-in-charge of the Bill, on the floor of the House:-

"In course of the discussion on the Land Revenue Demand, views were expressed against the use of

---

14. This chapter of the Bengal Tenancy Act, 1885 dealt with "summary procedure for the recovery of rents under the Bengal Public Demands Recovery Act, 1913."
15. Clause 101 = The Calcutta Gazette dated July 12, 1928, part IV, p.103.
16. Article on "A Retrospect and a Warning - 1885-1903" = Calcutta Review of April, 1908 (Article No.2) p.167 at pp.169-173.

certificate procedure by Government, by the Court of Wards and private landlords for realisation of rent. Government, therefore, out of deference to the wishes of the House propose to repeal chapter XIIIA depriving the private landlords of the privilege of realising rent under the summary procedure".[17]

In the statement of objects and reasons of the Bengal Tenancy (Amendment) Bill, 1937, it was stated that "when there are sufficient provisions for the realization of rent in the Act itself there is no need of taking the help of the summary procedure of the Bengal Public Demands Recovery Act, 1913".[18]

---

17. Bengal Legislative Assembly Proceedings, Second Session, 1937, vol.LI - No.4, p.1257.
18. The Calcutta Gazette dated December 16, 1937, part IVA, p.144.

CHAPTER 8

Raiyats' liability to ejectment

Sec.1. Ejectment of raiyats holding at fixed rates

Grounds of ejectment. - Ejectment of a raiyat at fixed rates was almost unknown. His rights had been recognized since the time of the Permanent Settlement.[1] The condition undér which he held his land were simple in character and a breach thereof could rarely occur. Section 18(1)(b) of the Bengal Tenancy Act, 1885 declared that "a raiyat holding at a rent or rate of rent, fixed in perpetuity, shall not be ejected by his landlord, except on the ground that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected". In order to maintain an ejectment suit against him under that section, two elements had to be made out: (a) that there was a condition in the contract between him and his landlord, on breach of which he was liable to ejectment and (b) that the condition was consistent with the provisions of the Act. Under section 178 (1) (c) "nothing in any contract between a landlord and a tenant made before or after the passing of this Act shall entitle a landlord to eject a tenant otherwise than

---

1. See p. 92.

in accordance with the provisions of this Act". Thus a condition in a lease that a raiyat at fixed rate was liable to ejectment for arrears of rent was null and void, because such a condition was inconsistent with section 65 of the Act, which provided that "where a tenant is....a raiyat holding at fixed rates, or an occupancy raiyat, he shall not be liable to ejectment for arrears of rent, but his..... holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon". Although a raiyat at fixed rates was liable to be ejected for breach of a condition in the contract consistent withthe provisions of the Act, he could not be ejected, except in execution of a decree passed on that ground.[2] It was also a condition precedent to the institutio of the ejectment suit, that the landlord should serve on the tenant before filing such a suit, a notice under section 155(1) of the Act, specifying the particular breach complained of, and, where the breach was capable of remedy, requiring the tenant to remedy the same, and in any case asking him to pay reasonable compensation for the breach. The object of the notice under that section was to give the tenant an opportunity of avoiding ejectment by

---

2. The Bengal Tenancy Act, 1885, sec.89.

remedying the breach (if that was possible) or paying reasonable compensation.[3] If the tenant failed to comply with the demand within a reasonable time, the landlord might bring a suit for ejectment, the procedure for which was laid down in sub-sections 2, 3 and 4 of section 155 of the Act and which is discussed below. If the above mentioned condition precedent was not complied with, the suit for ejectment would not be entertained by the Court.[4] A suit for ejectment on the ground of breach of condition in a contract had to be brought within one year of the breach.[5]

Other matters relating to ejectment of raiyats at fixed rates, such as a suit by a co-sharer landlord, the measure of compensation to be awarded to the landlord for breach of the condition, the loss of right of landlord to eject the raiyat, the denial of landlord's title as a ground for ejectment, and remedies for illegal ejectment were governed by the same rules as apply to occupancy raiyats which are dealt with in the next section.

3. Kali v. Kali (1916) 23 C.W.N. 569 at 571.
4. The Bengal Tenancy Act, 1885, sec.155(1).
5. Ibid., schedule III, Art.1.

Position of raiyats at fixed rates on sale of estate or tenure for arrears of revenue or rent. - A raiyat at fixed rates was protected from eviction at the instance of an auction purchaser of an estate sold for arrears of Government revenue. The Revenue Sales Act, 1859 laid down that such a purchaser acquired "the estate free from all encumbrances"[6] but he was not entitled "to eject any raiyat having a right of occupancy at fixed rent" even though he might hold under a lease granted by the defaulting proprietor.[7]

Similarly the interest of a raiyat at fixed rates was protected under section 160(d) of the Bengal Tenancy Act, 1885 which declared that "any right of occupancy" was a protected interest, i.e., an interest protected from annulment by the auction purchaser at a sale held in execution of a decree for arrears of rent of a tenure within which a raiyat at fixed rates held. But it was held that section 160(d) protected only such a raiyat from eviction, if he had acquired the right of occupancy by twelve years occupation[8] or an occupancy raiyat, who subsequently acquired a mokarari right.[9] It necessarily

---

6. The Bengal Land Revenue Sales Act, 1859, sec.37.
7. Ibid., sec.37, Proviso.
8. Sarbeswar v. Bijoy (1921) 26 C.W.N. 15 = I.L.R. 49 Cal. 280.
9. Midnapore zemindary v. Sadhumani, A.I.R. 1927 Cal.846.

followed that the right of a raiyat at fixed rates, not in actual occupation for twelve years, was not protected under section 160(d). So the legislature by inserting a new clause (ff) in section 160 by the Amending Act of 1928 categorically declared that his interest was protected. That provision was, however, abused; the dishonest tenure-holders granted non-annullable mokarari raiyati interests at nominal rents but at a high salami and then made default, to the detriment of the landlord and auction purchaser. So the legislature by the Amending Act of 1930, restricted the scope of the protection by adding the words "which was not been changed during twenty years" at the end of clause(ff). The effect of that amendment was that, in order to protect himself from annulment by the purchaser, the raiyat at fixed rates must show that his rent was not changed during twenty years preceding the sale.

Sec.2. Ejectment of occupancy raiyats.

Grounds of ejectment. - Under the Rent Acts of 1859 and 1869 it was held that parties must be bound by the terms of the leases which they had deliberately agreed upon between themselves[10]; but forfeiture was generally not

10. Ram v. Ram (1867) 7 W.R. 132.

allowed in cases in which no injury had resulted or where a money compensation was a sufficient remedy.[11] As to breach of conditions in leases, it was decided[12] that in the absence of a provision for the cancellation of a lease, or that the landlord should have a right of re-entry on breach of any of the stipulations, a breach did not determine a lease or give a right to eject. But when a forfeiture was provided as a penalty for the breach of any particular clause, it was enforced.[13] It was also held[14] that there no objection to the simultaneous enforcement of the two remedies of damages and forfeiture on breach of the conditions of a lease.

Under the statutes mentioned above a raiyat was liable to ejectment for arrears of rent.[15] But the Bengal Tenancy Act, 1885 effected a radical change by declaring that an occupancy raiyat like a raiyat at fixed rate "shall not be liable to ejectment for arrears of rent but his holding shall be liable to sale in execution of a decree

---

11. Alam v. William (1864) W.R. Gape vol. (Act X) 31.
12. Augur v. Mohinee (1865) 2 W.R. (Act X) 101.
13. Mahomed Faez v. Shib (1871) 16 W.R. 103.
14. Chundur v. Sirdar (1872) 18 W.R. 218.
15. The Bengal Rent Act, 1859, sec.21; The Bengal Act, 1869, sec.22.

for the rent thereof, and the rent shall be a first charge thereon"[16]. The grounds for ejectment of an occupancy raiyat were set out in section 25 of the Act, which laid down that "an occupancy raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground - (a) that he has used the land comprised in his holding, in a manner which renders it unfit for the purposes of the tenancy, or (b) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected". These were the only two grounds on which an occupancy raiyat could be ejected under the Act of 1885 and no others could be recognized[17]. We have already considered what amounts to misuse of land. Although the breach of a condition in a lease was a ground of ejectment of a raiyat, it was essentially necessary that the condition must be one consistent with the provisions of the Act.[18] Under section

---

16. The Bengal Tenancy Act, 1885, sec.65.
17. See pp.188-190.
18. The Bengal Tenancy Act, 1885, sec.25.

178(1)(c) nothing in any contract between a landlord and a tenant would entitle a landlord to eject a tenant otherwise than in accordance with the provisions of the Act. The same sub-section declared that it did not make any difference whether the contract was made before or after the passing of the Act.

We will consider separatdy the conditions for ejectment of a tenant laid down in section 155 of the Bengal Tenancy Act, 1885. Sub-section (1) provided that "a suit for the ejectment of a tenant, on the ground (a) that he has used the land in a manner which renders it unfit for the purposesof the tenancy, or (b) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment, shall not be entertained unless the landlord has served in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach". That sub-section also provided that, if the tenant failed to comply with that request within a reasonable time, the landlord would be entitled to bring a suit for ejectment,

the procedure for which was laid down in sub-section (2), (3) and (4). Under sub-sec.(2) "a decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach, is declared to be capable of remedy, to remedy the same". Sub-section (3) gave the court power to extend the period fixed by it under sub-section (2). Sub-section (4) laid down that "if the defendant, within the period or extended period (as the case may be) fixed by the court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed". Whether the misuse or breach was capable of remedy or not, the Court must specify a sum which would be the reasonable compensation for the misuse or breach.[19]

---

19. Afiladdi v. Satish (1916) 34 I.C. 497.

Section 155 was the subject of detailed examination in Pershad v. Ram[20] where the learned Judges observed: "The result, therefore, is that if the tenant pays the compensation for which he has been declared liable, he can not be ejected; if the misuse or breach is capable of being remedied, and he does not comply with the injunction of the court to remedy it, he is liable to be ejected and, if he fails to pay the compensation awarded, he is of course liable also to ejectment, but where he pays the compensation or where the act is capable of being remedied and he has remedied it, there is no ejectment". It is clear, therefore, that section 25 was based on the principle that an occupancy raiyat only forfeited his right as a tenant on one or both of the two grounds specified in the section. But section 155 afforded relief against such forfeiture and protected him from eviction, if he carried out the directions of the Court. The scope of section 155 was also considered in Kiron v. Hamid[21] in which the learned Judges observed that the decree contemplated in that section was a decree in the alternative.

---

20. (1894) I.L.R. 22 Cal. 77 at 85; followed in Afiladdi v. Satish (1916) 34 I.C. 497.
21. A.I.R. 1930 Cal. 300 at 301.

If one part of the decree i.e., the removal of mischief and the compensation was satisfied, the other part i.e., the part directing ejectment could not be enforced. But if the part of the decree which awarded compensation to the plaintiff and directed the defendant to remove the mischief was not complied with, then, without obtaining a further decree, the plaintiff was entitled to execute that part of the decree which directed ejectment. But the decree holder could not ask both for compensation and ejectment.[22]

The policy behind section 155 is derived from the English law of waste or improper user. "Waste (vastum) is defined to be a spoil or destruction to houses, gardens, trees, or other corporeal hereditaments, to the injury of the reversion or inheritance, and it has two divisions of great practical importance, voluntary waste, and permissive waste. Voluntary waste is actual or commissive, as by pulling down houses, and altering their structure,-the kind of damage which is sometimes provided against by express stipulation not to convert a house into a shop, etc., Permissive waste is a matter of negligence and omission only, as by suffering buildings

---

22. Korim v. Aswini (1921) 25 C.W.N. 658.

to fall or not for want of necessary reparations; the kind of damage which, where the contract of tenancy is in writing, is almost invariably provided against by express agreement to repair. It is not waste to omit to perform a covenant to put the demised premises into such repair as A.B. had previously put them into. The action for waste can only lie for that which would be waste if there were no stipulation respecting it"[23]. But there is another kind of user which, instead of damaging the property, improves it:- "Meliorating or ameliorating waste is such voluntary waste as improves the demised premises, as where a tenant puts a new front to his house: in respect of such waste, it seems that, unless substantial damages be proved, the tenant will not be interfered with by injunction. Equitable waste consists in acts of gross damage, usually the cutting down of ornamental timber by a tenant 'without impeachment of waste', and is so termed because before the Judicature Act only a Court of equity took cognizance of it[24]. Voluntary waste chiefly consists in felling timber, pulling down houses, opening mines or pits, or changing the course of husbandry. Whatever does a lasting damage to the freehold or inheritance is waste[25]. If the tenant converts arable land into wood,

23. Woodfall, op.cit., p.679.
24. Ibid.,
25. Ibid., p.680.

or meadow into arable, it is waste; for it changes not only the course of husbandry, but creates a difficulty in the proof of the title; and this would appear to be the case even where the act is done according to the custom of the country for the purpose of amelioration".[26]

Finucane and Ameer Ali observed that "under clause (a) of section 155(1), to give the plaintiff a cause of action there must be a conjunction of three different facts - (a) user of the land by the tenant, (b) in a manner which renders it unfit for (c) the purposes of the tenancy. The first question to ascertain is, what were the purposes for which the tenancy was created. In the second place, it has to be considered whether the tenant has used the land, and, if so, whether the manner in which he has used it renders it unfit for the purposes of the tenancy. Under the English law no injunction will be granted to restrain permissive waste. Similarly under the Bengal Tenancy Act, merely letting the land lie fallow or unused can hardly be said to be using the land in a manner which renders it unfit for the purposes of the tenancy. There must be actual user. Again, there may be user which, instead of rendering the

26. Ibid., p.681.

land unfit for the said purposes, may have the tenancy to promote them. For example, a tenant, by opening irrigation channels, may so improve the land as to enhance considerably the productiveness of the land. This would fall under the head of ameliorating waste under the English Law".[27]

A decree for ejectment under clause(a) of section 155(1) could be made only on a finding that the abuse has resulted in rendering the land unfit for the purpose of cultivation. It was not enough to find that a continuance of the alleged abuse for a sufficient length of time would produce injurious results, though an injunction might be issued restraining such user in such a case.[28] A landlord was not bound to sue for ejectment under this section. He might content himself with the lesser remedy of a perpetual injunction.[29]

We shall now consider the contents of the notice required to be served under section 155 upon the tenant before an ejectment suit could be filed. It should call upon the tenant to remedy the misuse complained of, and should further call upon him to pay compensation for the misuse.[30] Where a notice did not require the tenant to

---

27. M. Finucane and Ameer Ali, op.cit., p.648.
28. Nripendra v. Jogendra, A.I.R. 1933 Cal.890.
29. M. Finucane and Ameer Ali, op.cit., p.649.
30. Boidya v. Ghisue (1903) I.L.R. 30 Cal. 1063 at 1065.

remedy the misuse, though upon evidence it was found that it was capable of remedy, but only asked for compensation to remedy the misuse, it was held[31] that the notice was not in accordance with the requirements of section 155, so that the suit was not maintainable and a claim for compensation could not be allowed. A notice which omitted to claim compensation, either in addition or as an alternative to the demand on the tenant to remedy the misuse or breach, was invalid.[32] A notice which required the tenant to surrender the land, even if he remedied the breach and paid compensation was held invalid.[33] Where a suit failed from insufficiency of notice, the plaintiff was not entitled to any of the ancillary reliefs claimed in the plaint. Thus when a suit for ejectment from certain land was filed under section 155, but the plaint also contained other prayers, namely for a declaration that the defendant had no right to build houses on the land and for an injunction to remove the houses already built thereon and the suit for ejectment failed for insufficiency of notice, it was held[34] that the plaintiff was not entitled to the declaration

---

31. Shib v. Bepin (1922) 27 C.W.N. 144.
32. Maharaja Bahadur v. Makhan A.I.R. 1919 Cal.590.
33. Kali v. Kali (1916) 23 C.W.N. 569.
34. Pershad v. Ram (1894) I.L.R. 22 Cal. 77.

as prayed for. Where a landlord served a notice on a tenant calling upon him to fill up an excavation which the tenant had made in certain land or to pay compensation in the alternative or failing either, to quit the land, it was held[35] that the notice was not bad in law, merely because the compensation was demanded in the alternative. If the misuse complained of in a notice was, in fact, incapable of remedy, the notice was sufficient, although it did not require the tenant to remedy the misuse and a suit based on such a notice did not fail for want of a proper notice.[36] A notice was not bad merely because it included some land which, it transpired, the tenant did not hold under the landlord; nor was it bad because there was a slight error as to description or area of the holding, the tenant not being misled by such misdescription.[37] But exclusion of a part of the land from the notice was fatal.[38]

The provision for serving notice before filing a suit for ejectment under section 155(1) on the ground of misuse of land and breach of condition in the lease was

---

35. Boidya v. Ghisu (1902) IlL.R. 30 Cal. 1063.
36. Bepin v. Sib (1917) 43 I.C. 801.
37. Shama v. Uma (1897) 2 C.W.N. 106.
38. Bodardoja v. Ajijuddin, A.I.R. 1929 Cal.651.

borrowed from the (English) conveyancing and Law of Property Act, 1881.[39] The difference between section 155 of the Bengal Tenancy Act and section 14 of the conveyancing Act,1881 was considered by the High Court in Pershad v. Ram.[40] In that case Trevelyan J., observed:- "Our attention has been called to an English statute from which the first portion of section 155 has been taken, namely, section 14 of the conveyancing and Law of Property Act, 1881. The words of the first portion of that section are practically the same as those of the first portion of section 155, but the latter portion of section 14 of the English statute is wholly different, and is intended for an entirely different purpose from the latter portion of section 155, which provides for the nature of the decree..... The first portion of section 155 is directly controlled by the second portion of it, ... If there should be no loss to the landlord, there should be no ejectment or claim for compensation, and if, as a matter of fact, the landlord does not lose any money by this use of the land, apart from the removing of the property, the result would

---

39. Statement of objects and reasons of the Bill of 1883, para. 120 = Selections, p.213; Pershad v. Ram (1894) I.L.R. 22 Cal. 77 at 81.
40. Ibid.,

be that there would be no ejectment".[41] In other words the Indian and English statutes are not in pari materia, and "excepting a verbal similarity between a portion of section 155 of the Tenancy Act and a portion of section 14 of the English statute, they do not run on parallel lines."[42] They are, however, similar in their main features. Both of them "suspend the right of forfeiture altogether until a certain notice has been given, during the running of which the lessee has a locus penitentiae granted to him; and next, even after the notice has been given and has not been complied with, they afford the tenant relief on terms".[43]

In a suit for ejectment on the ground of the misuse of the land the claim of the landlord must include all the lands comprised in the tenancy. If there was a misuse of a portion of the land, the landlord's right to eject must be exercised in respect of the whole holding. He could not bring a suit for ejectment only from the portion which was actually misused.[44] If the whole of the land forming the tenancy was included in the suit in ejectment but there was an understatement of the area,

---

41. Ibid., p.81.
42. Ibid., p.85.
43. Edgar Foa, op.cit., p.127.
44. Prabhati v. Tarak (1941) 46 C.W.N. 786 at 788; Kamaleswari v. Harbullabh (1905) 2 C.L.J. 369.

the defect would not be fatal. But if a part of the tenancy was excluded from the suit and of such part the defendant, were in possession as tenants under the plaintiff, the plaintiff could not obtain a decree in the suit.[45]

Suit by co-sharer landlord. - Prior to the Bengal Tenancy (Amendment) Act, 1928 a co-sharer landlord was not competent to obtain a partial ejectment of a raiyat to the extent of his share, unless the tenancy was determined by all the co-sharers.[46] It was believed that such a right was barred by section 188 of the Act, under which joint landlords had to act collectively or by a common agent. That section ran as follows:-

"188. Where two or more persons are joint landlords, anything, which the landlord is under this Act required or authorised to do, must be done either by both or all those persons acting together, or by an agent authorised to act on behalf of both or all of them".

But it was held in Hari v. Ram[47] that section 188 was no bar to a suit for ejectment by one of the co-sharer landlords, when the suit was brought for ejectment under the general law of contract on the ground of breach of the conditions of the lease by the tenant. To quote Prinsep and Hill, J.J., - "The right under which the plaintiff sues is not a thing which she, as landlord, is, under the

45. Bodardoja v. Ajijuddin A.I.R. 1929 Cal. 651.
46. Gholam v. Khairan (1904) I.L.R. 31 Cal. 786; Gobind v. Kamijuddi (1905) 9 C.W.N. ccxlvi.
47. (1892) I.L.R. 19 Cal. 541.

Bengal Tenancy Act, required or authorised to do. The suit is brought under the contract law on breach of the conditions of a lease by the tenant"[48]. In that case the defendant was a tenant-at-will of nij-jote lands and had, in contravention of his lease, cut down trees, excavated a tank and otherwise rendered the land unfit for the purposes of the tenancy. As nothing in Chaper V[49] and VI[50] of the Act applied to such lands[51], the tenant was liable to ejectment under the law of contract and the provisions of section 188, therefore, did not apply.

But the position was different under the Amending Act of 1928. Under proviso (iii) to section 188 it was possible for a co-sharer landlord to institute a suit for ejectment by impleading the other co-sharers as defendants in the manner indicated in section 148A[52] with an option to them to become co-plaintiffs. Proviso (iii) to section 188 ran thus:-

"Provided that one or more co-sharer landlords, if all the other co-sharer landlords are made parties defendant to the suit or proceeding in manner provided in sub-sections (1) and (2) of section 148A and are given the opportunity of joining in the suit or proceeding as

---

48. Ibid., p.543.
49. This chapter dealt with occupancy raiyats.
50. This chapter dealt with non-occupancy raiyats.
51. The Bengal Tenancy Act, 1885, sec.116.
52. Supra, pp.526-27.

co-plaintiffs or co-applicants, may.....bring a suit for ejectment of a tenant on the grounds specified in... clause(b) of section 18, section 25, or clause(b), or clause (c) of section 44,....."

In terms of this amendment it was held in Jerman v. Ram[53] that a co-sharer who had made the other co-sharer landlords pro forma defendants in the suit for ejectment was entitled to get a decree for recovery of possession of the property to the extent of his share jointly with the pro-forma defendants in the suit.

Measure of compensation. - The compensation to be awarded in the decree under sub-section (2) of section 155 of the Act was for the injury caused to the landlord for misuse or breach. "The natural and obvious way to assess compensation for the breach of covenant is", said Breachcroft J., "to compare the position of the landlord before the breach with his position after the breach, and the measure of compensation will be the extent to which he has been prejudicially affected by the breach. If he has not been prejudicially affected, reasonable compensation can not be anything more than a nominal sum".[54] Similarly in Krishna v. Mohendra[55] where a suit was brought for breach of a covenant not to excavate a tank, only nominal damages

53. (1933) 58 C.L.J. 133.
54. Keshab v. Jnanendro (1914) 20 C.L.J. 332 at 337.
55. (1921) 25 C.W.N. 930 at 933.

were awarded, in view of the fact that the tank constituted an improvement of the property and supplied good drinking water to the people of the village. The two dasses of contingencies, namely, misuse of the land and breach of a condition were placed in the same category in so far as the assessment of reasonable compensation was concerned.[56]

Loss of right of landlord to eject a raiyat. - When a raiyat had incurred forfeiture of the tenancy by reason of misuse of the land or breach of condition, his landlord was entitled to eject him but he might lose this right by acquiescence or waiver.

Regarding the acquiescence of a landlord it was held[57] in a number of cases that, if he stood by and allowed the tenant to continue to misuse the land, he could not afterwards turn round and seek to eject him or interfere with him on that ground.[58] In Noyna v. Rupikun, where a landlord allowed the conversion of agricultural land in to

---

56. Keshab v. Jnanendro (1914) 20 C.L.J. 332.
57. Banee v. Joy Kishen (1869) 12 W.R. 495; Shib v. Bamun (1871) 15 W.R. 360 at 362; Peter Nicholl v. Tarinee (1875) 23 W.R. 298; Kedar v. Khettur (1880) I.L.R. 6 Cal. 34; Prosunno v. Jagun (1881) 10 C.L.R. 25; Noyna v. Rupikun (1882) I.L.R. 9 Cal. 609.
58. Ibid.,

a mango grove, stood by and allowed the tenant to spend his labour and capital upon the land, without taking any action in the matter, it was held that the court would not assist him with an order of injunction after the lapse of a certain time.[59] In Banee v. Joy Kishen a landlord was not allowed to turn the tenant out of the land when he had stood by and allowed him to erect pucca buildings on the land, without any objection whatever, although in the kabuliat there was a stipulation restraining the tenant from building.[60] In Shib v. Bamun it was said that, if a landlord remained passive and took no objection to the erection of a brick house, he could not thereafter be heard to say that the tenant's act was unauthorised.[61] In Peter Nicholl v. Tarinee it was held that the continuous use of land for the purpose of making bricks for a period of twenty five years would raise a presumption of acquiescence on the part of the landlord. In Singaran Coal Syndicate v. Indra[62] where the plaintiff stood by while mining operations were in progress, he could not subsequently complain that such operations rendered the land unfit for cultivation.

---

59. (1869) 12 W.R. 495.
60. (1871) 15 W.R. 360 at 362.
61. (1875) 23 W.R. 298.
62. (1905) 10 C.W.N. 173.

The right of a landlord might also be lost by conduct amounting to a waiver of the forfeiture. In England the "courts of law always lean against forfeiture;[63] therefore, whenever a landlord means to take advantage of any breach of covenant or condition so that it would operate as a forfeiture of the lease, he must take care not to do anything which may be deemed an acknowledgment of the continuance of the tenancy, and so operate as a waiver of the forfeiture. Merely lying by and witnessing the breach is no waiver; some positive act must be done. The general rule is, that, if a lessor, or other person legally entitled to the reversion, knowing that a forfeiture has been incurred by the breach of any covenant or condition, does any act whereby he acknowledges the continuance of the tenancy at a later period, he thereby waives such forfeiture. Thus the following acts amount to a waiver:- Demand of rent accruing due after the forfeiture, if the demand be absolute and unqualified. Acceptance of rent accruing due after the forfeiture. Such an acceptance operates, as a matter of law to waive all forfeitures then known to the lessor, notwithstanding any protest on his part against such waiver; but the subsequent receipt

63. The report of the Rent Law Commission, 1880, para.34; Sreemuttya v. Bhyrub (1876) 25 W.R. 147 at 148.

of rent due prior to the forfeiture is no waiver. Action for rent accruing due after the forfeiture, or distress for rent, also amount to waiver"[64].

Accordingly it was held by the Calcutta High Court, adopting the English principle, that a landlord who accepted rent from his tenant subsequent to the date of forfeiture must be held to have waived his right to ejectment[65], notwithstanding the protest of the landlord that such acceptance was without prejudice to his right of forfeiture[66]. Similarly if he sued his tenant for rent due subsequent to the date of the forfeiture, he lost his right to eject[67]. But, as the tenant continued to be a tenant up to the date fixed in the decree under section 155 of the Bengal Tenancy Act for the performance of the obligation imposed on him thereby, the institution of a suit for rent for arrears accruing up to that date did not operate as a waiver of forfeiture[68]. If, after obtaining a decree for ejectment, the landlord sued for arrears of rent for a period prior to the ejectment decree, it was

---

64. Woodfall, op.cit., 360.
65. Kali v. Fuzle Ali (1883) I.L.R. 9 Cal. 843.
66. B.N.Railway v. Farm Balmukunda (1923) 80 I.C. 200 and the cases cited therein.
67. Jogeshari v. Mahomed Ibrahim (1886) I.L.R. 14 Cal. 33.
68. Syam v. Sati Nath (1916) 24 C.L.J. 523 at 532.

held that there was no question of waiver and ejectment should be allowed.[69] He could sue for ejectment on further breaches of the condition of the lease.[70] Receipt of rent was not in itself a waiver of every previous forfeiture; it was only evidence of a waiver.[71]

To constitute waiver, knowledge of the right was essential. In Dhanukdhari v. Nathima,[72] it was said that there could be no waiver unless the person against whom the waiver was claimed had full knowledge of his rights and of the facts which would enable him to take effective action for the enforcement of such rights. In Swarnamoyee v. Aferaddi[73] the views of Parker J. expressed in Mathews v. Smallwood[74] was followed. In the latter case the learned Judge said: "Waiver of a right of re-entry can only occur where the lessor, with knowledge of the facts upon which his right to re-enter arises, does some unequivocal act recognizing the continued existence of the lease. It is not enough that he should do that which recognizes or

---

69. Mansar v. Abdul (1909) 10 C.L.J. 187.
70. Dulli v. Meher (1867) 8 W.R. 138.
71. Chunder v. Sirdar (1872) 18 W.R. 218.
72. (1907) 11 C.W.N.,848.
73. A.I.R. 1932 Cal. 787.
74. (1910) 1 Ch. 777, followed in Fuller's Theatre v. Rofe (1923) A.C. 435 quoted in Swarnamoyee v. Aferaddi A.I.R. 1932 Cal. 787.

appears to recognize, the continued existence of the lease, unless at the time when the act is done, he has knowledge of the facts under which or from which, his right of re-entry arose ... The question whether there has been a waiver in such a case is one of law, and the onus is on the lessee[75] to adduce some evidence of the lessor's knowledge, and proof of an act showing recognition of the tenancy, does not throw the onus of proving want of knowledge of the lessor". An objection that forfeiture had been waived might be taken in proceedings in execution of the decree for ejectment.[76]

Limitation in ejectment suits. - The Bengal Tenancy Act, 1885 did not provide any period of limitation for a suit for ejectment of a tenant on the ground of misuse of the land. So there were some doubts on the question whether limitation was two years under Article 32 of the second schedule of the Limitation Act, 1877 (now Article 32 of the first schedule of the Limitation Act, 1908) or six years under Article 120 of that Act, (now Article 120, First Schedule of the Limitation Act, 1908). In Soman v. Raghubir[77] it was held

75. Dhanukdhari v. Nathima (1907) 11 C.W.N. 848.
76. Syam v. Satinath (1916) 21 C.W.N. 776 = 24 C.L.J. 523.
77. (1896) I.L.R. 24 Cal. 160.

that a suit brought under section 25, clause(a) and section 155 of the Bengal Tenancy Act, for the ejectment of a tenant and removal of trees planted by him on land leased out for agricultural purposes, was governed by article 32, Schedule II of the Limitation Act, 1877. In that case the learned Judges expressed themselves in the following terms:-[78]

"We notice that the legislature, in enacting the Bengal Tenancy Act provided one year's limitation for a suit to eject a raiyat on account of a breach of condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach; that is to say, for a suit under clause(b) of section 25 of the Act. They omitted to provide in that Act any limitation for a suit under clause(a) of that section, and they may possibly have considered that the general law which provides two years' limitation sufficiently dealt with that case. If it were otherwise, there would be an extraordinary difference between the periods provided in the one case for a suit where there is a written contract, and in the other for a suit of a similar nature where there is no written contract. Moreover, apart from the words of the section, it is obvious that in a case of this kind one would expect to find the legislature fixing a

---

78. Ibid., p.162.

comparatively short period of limitation, as great hardships might be done to a tenant if his landlord were to stand by and take no steps until close upon the expiration of a long period of limitation.

"We have been to some extent pressed by two decisions of Division Benches of this Court. The first is the decision in the case of Keddar Nath v. Khettur Pal,[79] and the second that of Gunesh v. Gondour.[80] In neither of those cases is any reason given for the conclusion at which the Court arrived that article 32 was inapplicable. Moreover those cases are not cases under the Bengal Tenancy Act, or cases exactly of the class to which the present case belongs. If we found that they were identical with the present case, we should have been bound to refer the matter to a Full Bench, but we think it unnecessary to do so here. This suit was brought under section 25, clause(a) and section 155 of the Bengal Tenancy Act, and the question is whether a suit of that kind comes within article 32 of the Limitation Act. That question has never yet, as far as we know, been decided. We think that it does come under article 32".

In Sharoop v. Joggesur[81] a suit was brought by the

---

79. (1880) I.L.R. 6 Cal. 34.
80. (1882) I.L.R. 9 Cal. 147.
81. (1899) I.L.R. 26 Cal. 564 F.B.

landlord against the tenant under section 155 for ejectment and compensation; the plaintiff alleged that the defendant had excavated a tank on the land rendering it unfit for the purposes of the tenancy, and he, therefore, prayed that the defendant might be directed to fill up the tank and to pay damages, failing which the court might award khas possession of the land to the plaintiff. The defendant urged inter alia that the suit was barred by limitation, inasmuch as it was brought more than 2 years after the date of the excavation of the tank. The lower courts overruled the objection of the defendant, being of opinion that the suit was governed by article 120 of schedule II of the Limitation Act, 1877 (now article 120, First Schedule of the Limitation Act, 1908) which provided a period of six years. They accordingly decreed the plaintiff's suit. On appeal to the High Court, the question, whether article 32, as urged by the defendant, or article 120 as contended by the plaintiff applied to the case, was referred to a Full Bench.[82] It was held that article 32 applied and the suit was barred. In delivering the Judgement of the Court Maclean C.J. observed as follows:-[83]

"The primary relief sought was in effect a

82. Ibid.,
83. Ibid., p.566.

mandatory injunction directing the defendant to fill up the tank in question and to pay the plaintiff compensation for his alleged wrongful act; the secondary relief was for ejectment. We say secondary, for the ejectment was not to follow, and could not follow, save upon failure of the defendant to fill up the tank and make the compensation; it was contingent on that failure. For the tort complained of, the plaintiff had three remedies, (1) damages, (2) a mandatory injunction, and (3) ejectment, contingent upon the tenant not complying with certain conditions. This being the nature of his suit, under which article of the Limitation Act does the case come? If under article 32, the plaintiff is barred; if under article 120, he is not.

"Article 32 is as follows: 'against one who having a right to use property for specific purposes perverts it to other purposes'. As a general principle, in construing this Act of the Legislature we must not regard a case as coming under article 120, unless clearly satisfied that it does not come under one of the many articles dealing with specific cases. Further, if there be two articles which may cover the case, the one, however, more general and the other more particular or specific, as a principle of construction the more particular and specific article ought to be regarded as the one governing the case. It

can not be successfully contended that, reading the language used according to its usual and ordinary acceptance, the words of article 32 are not sufficiently wide to cover the present case. The case is clearly within the words of the article; it is the precise case provided for by the article. The defendant is one who, having a right to use the property demised to him for agricultural purposes, has perverted it to another purpose, viz., that of a tank. Upon which principle then can we properly say that the article can not apply? We are invited rather to wander into the jungle of speculation than follow the beaten track defined by the language used.

"It is contended for the respondant, and this was the stress of his contention, that this is an action based upon, or framed under section 155 of the Bengal Tenancy Act, 1885, and that, as that Act was not in existence when the Limitation Act of 1877 was passed, the legislature could not have intended that article 32 of the latter Act should apply to cases framed under the provisions of the former Act.

"This appears to us a fallacy. Suits against a tenant for perverting property to purposes other than those for which he had the right to use it were well known before the Bengal Tenancy Act of 1885, though before that

Act there might have been no right to eject for such perversion independent of contract. Section 155 creates no fresh class of suit; it affords no fresh cause of action; it only provides that in ejectment suits a tenant may obtain relief against forfeiture on certain terms. It would be strange thing to infer from that section that the legislature intended to interfere with the operation of the provisions of the Statute of Limitations then in force, or by reason of section 155 to say that when a person is sued for perverting the property demised to him to purposes other than those specified the ordinary Statute of Limitations did not apply. The Bengal Tenancy Act of 1885 deals specifically with the question of limitation in certain cases, and this supports an inference that the legislature intended that any other cases should be left to the general law, and the policy of shortening the period of limitation in cases more or less analogous to the present, is indicated by article I in schedule III. But even if the plaint had merely asked for ejectment, leaving it to the defendant to raise his claim to relief against forfeiture, as given him by section 155, seeing that the claim to eject, is based on the case expressly provided for by article 32, we should have said that the article applied. That article says nothing about the relief to be sought or to be granted;

it only lays down within what particular period of limitation a particular suit based upon a particular tort is to be brought".

It was settled by a series of decisions[84] that a suit for ejectment of a raiyat on the ground of misuse of the land was governed by article 32 of schedule I of the Limitation Act, 1908 under which the period of limitation was 2 years. In Boidya v. Ghisu[85] it was said that "even if there is a term in the lease by which the tenant bound himself not to alter the condition of the land, this does not reduce the period of limitation allowed by him from two years to one when the tenant misuses the land and renders it unfit for the purpose for which it was demised". In other words article 32 should govern such cases. In Taher v. Tarafdi[86] it was held that where the defendant was guilty both of misuse of the land as well as breach of contract and the plaintiff

---

84. Soman v. Raghubir (1896) I.L.R. 24 Cal. 160; Sharoop v. Joggesur (1899) I.L.R. 26 Cal. 564 F.B; Gobind v. Kamiiuddi (1905) 9 C.W.N. ccxlvi; Taher v. Tarafdi (1915) 20 C.W.N. 661; Krishna v. Mohendra (1921) 25 C.W.N. 930 at 933; Shib v. Panchanan (1935) 64 C.L.J. 71; Bhupendra v. Trinayani (1937) 42 C.W.N. 758; Prabhati v. Tarak (1941) 46 C.W.N. 786.
85. (1903) I.L.R. 30 Cal. 1063 at 1066.
86. (1915) 20 C.W.N. 661.

primarily complained of misuse, article 32 would apply. In that case the defendant took the land for his own agricultural purposes but allowed a portion of his holding to be encroached upon by a stranger and exchanged another plot with a stranger in contravention of the terms of the kabuliat.[87] According to the rulings[88] the period of limitation ran from the time of the landlord's knowledge of the misuse complained of.

When the misuse complained of was committed by several distinct acts of waste, limitation under article 32 did not necessarily run from the knowledge of the first act of waste.[89] In Prabhati v. Tarak[90] the learned Judges said: "The right to sue does not accrue until and unless the land has been rendered unfit for the purposes of the tenancy. This result is not necessarily reached as soon as the act is commenced. Neither can it be said that it is not reached until the act is finally completed. It is a question of fact, which depends on the evidence forthcoming in the case, as to when and at what stage the land may be regarded as having become unfit by reason of any acts committed by the tenants".

---

87. Ibid.,
88. Gobind v. Kamijuddi (1905) 9 C.W.N. ccxlvi; Prabhati v. Tarak (1941) 46 C.W.N. 786; The Indian Limitation Act, 1908, First Schedule, Article 32.
89. Prabhati v. Tarak (1941) 46 C.W.N. 786 at 788
90. Ibid.,

A suit for ejectment of a raiyat for breach of a contract, however, was governed by article I of schedule III of Bengal Tenancy Act, 1885, under which the limitation was one year from the date of breach of condition.

A notice under section 155(1) was a notice of suit within the meaning of section 15(2) of the Limitation Act, 1908; hence in computing the period of limitation for the suit under section 155, the period of notice had to be excluded.[91] Sub-section (2) of section 15 of the Limitation Act provides that "in computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded".

Denial of landlord's title - how far a ground for ejectment. - Under the Rent Acts of 1859 and 1869, there was no provision for forfeiture of a tenancy by reason of denial of landlord's title but in several cases following

---

91. Ibid., pp.786 and 789.

the English law it was held that such denial would cause forfeiture of tenancy rendering a raiyat liable to be ejected.[92] In Satyabhama v. Krishna[93] Garth C.J., observed: "The rule of the English law is, that where, by matter of record, a tenant disclaims his landlord's title, and sets up an adverse title either in himself or in some third party, he thereby forfeits his tenancy". In Mozhuruddin v. Gobind[94] A, a raiyat with rights of occupancy in a rent suit brought against him by B, the purchaser of an aima[95] mahal[96], denied the existence of the relationship of landlord and tenant between himself and B, on the ground that the lands occupied by him were not included in the said mahal purchased by B. B's rent suit having been dismissed for failure of evidence on this point, B afterwards brought a regular suit to evict A and for mesne profits. It was

---

92. Mirza Nadir v. Muddurram (1885) 2 W.R. (Act X) 2; Satyabhama v. Krishna (1880) I.L.R. 6 Cal.55; Mozhuruddin v. Gobind (1880) I.L.R. 6 Cal. 436; Shumsher v. Doya (1881) 8 C.L.R. 150; Ishan v. Shama (1883) I.L.R. 10 Cal. 41; Debiruddin v. Abdur Rahim (1888) I.L.R. 17 Cal.196; Ananda v. Abrahim (1899) 4 C.W.N. 42; C.D.Field, Digest, 17 f.n.7 and article 12, sub-sec.8 and the cases cited therein.
93. (1880) I.L.R. 6 Cal. 55.
94. (1880) I.L.R. 6 Cal. 436.
95. 'Aima' = land granted by the Mogul Government, either rent free or subject to a small quit-rent, to learned religious persons of the Mahomedan faith, or for religious and charitable uses in relation to Mahomedanism Such tenures were recognized by the British Government as hereditary and transferable (Ibid.,p.436 f.n.).
96. 'Mahal' = estate.

held that A, by denying the title of B in the rent suit, thereby forfeited his rights of occupancy and became liable to eviction. In Ishan v. Shama[97] which was a suit brought to recover rent in 1877, the defendant set up his lakheraj (rent free) title and as a result the suit was dismissed. In 1880 in a suit brought by the same plaintiff to obtain khas possession of the land in question in the former suit, against the same defendant and three others claiming under the same title as himself, the defence that the land was lakheraj was set up by all. It was held that the case fell within the principle laid down in Satyabhama v. Krishna[98] and that the plaintiff, who had successfully proved that he had collected rents from the predecessors of the defendants, was entitled to evict them as trespassers on their failure to prove their lakheraj title. In Shumsher v. Doya[99] Morris J. observed that "there are various rulings of this Court on this point. But it seems to us that the weight of authority is in favour of the view that when a tenant directly repudiates the relation

---

97. (1883) I.L.R. 10 Cal. 41.
98. (1880) I.L.R. 6 Cal. 55.
99. (1881) 8 C.L.R. 150 at 151.

of landlord and tenant and sets up an adverse title in himself, the landlord is entitled to take possession of the land".

But in some other cases[1] doubt was expressed as to the applicability of the English principle in India. The Court in Mozhuruddin v. Gobind[2] was pressed to refer the point to a Full Bench for decision but the Court declined to do so.

Under the Bengal Tenancy Act, 1885, a raiyat could not be ejected on the ground of denial of landlord's title.[3] In arriving at this decision Wilson J. observed as follows:-[4]

"That Act (The Bengal Tenancy Act, 1885) made a material change in the law in this respect. The mode in which it has dealt with the subject of eviction of tenants from their tenures or holdings is to enumerate the things which shall be the grounds for a suit for eviction, and,

---

1. Rajnarain v. Gour (1866) 6 W.R. 215 at 216; Doorga v. Sree Janoo (1872) 18 W.R. 465 at 466; Mahomed v. Ahmed (1874) 22 W.R. 448 at 449.
2. (1880) I.L.R. 6 Cal. 436.
3. Debiruddin v. Abdur Rahim (1888) I.L.R. 17 Cal. 196; followed in Dhora v. Ram (1890) I.L.R. 20 Cal. 101; Sheikh Nizamuddin v. Momtajuddin (1900) 5 C.W.N. 263 at 264; Chandra v. Bissesswar (1892) 1 C.W.N. 158; Jnanendra v. Jogendra (1925) 91 I.C. 191.
4. Debiruddin v. Abdur Rahim (1888) I.L.R. 17 Cal. 196 at 199.

in express terms, to exclude every other ground. Various classes of tenants are dealt with in their order..... Section 18 deals with the case of a raiyat holding at a fixed rent in perpetuity and it says that he 'shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.' The case of an occupancy raiyat is dealt with in section 25, which says: 'An occupancy raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground - (a) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or (b) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected'. The next case, that of a non-occupancy raiyat, is dealt with in s.44 which says: 'A non-occupancy raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise (namely): (a) on the ground that he has failed to pay an arrear of rent; (b) on the ground that he has used the land in a manner which

renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected; (c) where he has been admitted to occupation of the land under a registered lease, on the ground that the terms of the lease has expired; (d) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired'..... Then s.89 provides that no tenant shall be ejected from his tenure or holding except in execution of a decree, so that a landlord, even in case where eviction is allowed, can not evict without obtaining a decree of a Court for that purpose. And s.178 strengthens the matter, because it provides that 'nothing in any contract between a landlord and tenant made before or after the passing of this Act.....shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act'. Thus it seems clear that under the present Rent Law in all the cases to which it applies there can no longer be any eviction on the ground of forfeiture incurred by denying the title of the landlord".

The matter was thoroughly discussed in Sreemati

Mallikadasi v. Makham[5] where it was observed: "There can not be any eviction from an agricultural holding governed by the Bengal Tenancy Act on the ground of forfeiture incurred by denial of the landlord's title as such ground is not specified in sections 25 and 44...of that Act which enumerate the grounds of ejectment of occupancy and non occupancy raiyats respectively".

The same inference follows from the debates in Council of the framers of the Bengal Tenancy Act, 1885. When the Bill of 1884 was under discussion it was moved by Mr.P.M. Mukherjee on behalf of the Maharaja of Darbhunga that the following should be added as a ground for eviction to section 44: "On the ground that he has disclaimed the title of his landlord before any public officer or Court"[6]. The mover thus explained the object of his amendment:-

"The result of the judicial decisions have established that in Bengal as in England a tenant disclaiming his landlord's title forfeits his tenancy. The amendment fairly summarises the results of the judicial decisions.

---

5. (1905) 9 C.W.N. 928 at 932.
6. Selections, p.564.

As to the equity of the principle there can be no doubt. Nor do I see any objection on the score of principle to enacting it. A tenant can never be harassed by false claims in this respect, for the disclaimer is entirely his own act, and unless it is reduced to writing by a proper authority he can not be proceeded against in respect thereof. The necessity for enacting such a provision for the protection of the landlord is clear. In questions of boundary disputes or disputed title, it is common for tenants to be won over by the rival party who may not really be in possession. In common rent suits raiyats thus gained over raise issues of title and plead adverse possession. The whole question of title is fought out as a side issue. We are sure this Hon'ble Council has no sympathy with such dishonest tenants or with the unnecessary and reprehensible fostering of litigation. In Bengal the consequences of such disclaimer are very effective checks upon false claims to hold land as rent-free, which, in the present state of the law, it is very difficult for the landholders to disprove. Justice and expediency alike demand that the Judge-made law on the subject should not be repealed by implication[7]".

---

7. Ibid.,

In reply to the amendment Mr.Reynolds said: "I think if the hon'ble member desired to raise this question it should have been raised in connection with section 25. Notice of a similar amendment was given and withdrawn, and I was under the belief that it was withdrawn because the position was untenable"[8]. On the same point Sir Courtenay Ilbert said:- "I can not advise the Council to give the legislative sanction to what may fairly be described as an obsolescent doctrine of English law. I will not call it an obsolete doctrine, because it still appears in the text-book. But I call it an obsolescent doctrine, because it is very rarely enforced, and, when attempts are made to enforce it, the Courts regard it with disfavour and limit its application in every possible way. And it appears to me that the doctrine is even more dangerous in Bengal than it is in England. Owing to a variety of well-known circumstances, such as the fact that the raiyat usually does not derive his title from contract, to the comparative rarity of written agreements, to the absence of definite landmarks, and to the shifting from natural causes of such landmarks as exist, it is often a

---

8. Ibid., p.565.

matter of extreme doubt whether the relation of landlord and tenant exists between two persons with respect to a particular land. And when the existence of such a relation is denied or questioned on either side, we are by no means entitled to assume that the grounds for denying or questioning it are fraudulent or improper. We have done our best, by various provisions of this Bill, to lessen the number of excuses for alleging this doubt, and to provide for cases in which it is alleged in good faith..... By these and other provisions we have endeavoured to assist, as far as is practicable and reasonable, both landlords and tenants, and I am not prepared to go further[9]". The amendment was then put to vote and negatived.

In Nilmadhab v. Anantaram[10] the plaintiffs sued the defendant for the rent of 1296-97 B.S; but as the defendant denied the relationship of landlord and tenant, they withdrew the suit. Subsequently they brought another suit for the rents of 1298-99 B.S. and again the defendant denied the relationship of landlord and tenant; this suit

---

9. Ibid.,
10. (1898) 2 C.W.N. 755; also Foyi v. Aftabuddin (1902) 6 C.W.N. 575; Haranath v. Kamini (1906) 3 C.L.J. 25n; Ramgati v. Pran Hari (1905) 3 C.L.J. 201; Khater v. Sadruddi (1907) I.L.R. 34 Cal.922; Sheikh Miadhar v. Rajani (1909) 14 C.W.N. 339.

was ultimately dismissed on that ground. The plaintiffs then brought a suit to recover khas possession; once more the defendants denied the title of the plaintiffs and repudiated any relationship of landlord and tenant existing between them. The Court of first instance decreed the plaintiffs' suit; the lower Appellate Court, however, on the ground that the denial of the relationship of landlord and tenant did not operate as forfeiture, modified the munsif's decree, recognizing the plaintiffs' title as landlord but holding that they were not entitled to khas possession. On appeal to the High Court it was held that the rule that a denial of the relationship of landlord and tenant did not operate as forfeiture did not apply, where that denial was given effect to by a decree of Court. In arriving at the decision the learned Judges observed: "It having been found that the land belonged to the plaintiffs and it having been found in the previous suit that the defendants are not the plaintiffs' tenants, it follows that defendants have no right to remain on the land" and the plaintiffs were entitled to khas possession. This ruling was followed in Foyj v. Aftabuddin[11] in which

11. (1902) 6 C.W.N. 575.

it was said that "the defendants are estopped by a matter of record from pleading that they are plaintiff's tenants". But the correctness of both those decisions was doubted in Sreemati Mallikadasi v. Makham[12] where in a previous rent-suit the defendant objected that the plaintiff alone was not entitled to realise the whole rent, and on that objection the plaintiff's suit was dismissed; it was held that in a subsequent suit for ejectment brought by the plaintiff, in which he succeeded in establishing his title to the land, the defendant was not "estopped by a matter of record" from relying on his tenancy as a defence to such a suit. That case was however distinguished in Sheikh Miadhar v. Rajani[13] on the ground that in the former case the plaintiff was only one of several co-sharers; so the defendant was not debarred from pleading tenancy in the subsequent suit for ejectment. Those cases were, however, again fully considered in Ekabhar v. Hara[14] where, in a suit for rent, the defendant denied the relationship of landlord and tenant and obtained an adjudication in his favour; when subsequently the landlord brought a suit for khas possession, it was held that the

12. (1905) 9 C.W.N. 928.
13. (1909) 14 C.W.N. 339.
14. (1910) 15 C.W.N. 335.

landlord was entitled to succeed, inasmuch as the question as to the relationship of landlord and tenant between the parties was barred by the rule of res judicata and it was not open to the defendant to assert his title as tenant in such suit. That ruling settled the whole controversy over this vexed question. In delivering the judgement of the Court Jenkins C.J.,[15] said as follows:-

"What was said in Sreemati Mallikadasi v. Makham,[16] was based on what was said or decided in Debiruddin's case[17] and Dhora's case.[18] But turning to those cases, it becomes apparent from the facts that in neither of them could the plea of res-judicata arise; for in Debiruddin's case,[17] the denial of the relationship was negatived, while in Dhora's case[18] the suit was between different parties. Therefore I venture to think that, so far as this case can be rested on the plea of res-judicata, those cases do not touch the matter". Then the learned Chief Justice held that "the question is not whether a denial has worked forfeiture but whether the Court, having negatived, in a former suit, the relationship of landlord and tenant at the instance of the defendant, it is now open to the defendant to argue

---

15. Ibid., p.337.
16. (1905) 9 C.W.N. 928.
17. (1888) I.L.R. 17 Cal. 196.
18. (1890) I.L.R. 20 Cal. 101.

that that relationship should be established in his favour".

In this view it necessarily followed that, where the disclaimer did not reach the stage of res judicata, there was no forfeiture. Thus where the landlord, after the dismissal of his suit for rent upon the tenant's denial of the relationship of landlord and tenant, appealed and pending the appeal withdrew the suit with liberty to bring a fresh suit and then brought an action to eject the tenant on the ground of such denial by the tenant, it was held[19] that the only decree that could be relied on was a decree which had ceased to exist owing to the withdrawal of the suit by the landlord and so the denial of the relationship of landlord and tenant by the tenant would not work any forfeiture, as it was not given effect to by a decree of the Court. But disclaimer, as the word imports, must be a renunciation by the party of his character of tenant either by setting up title in another or by claiming title in himself. A mere renunciation of a tenancy without denial of the landlord's title, though it might operate as a surrender, could not amount to a disclaimer.[20] There was no disclaimer when the tenant put the landlord to the proof of his alleged title by purchase,

19. Pyari v. Hem (1912) 16 C.W.N. 730.
20. Protap v. Biraj A.I.R. 1914 Cal.51.

nor when the tenant merely questioned the extent of the landlord's interest and his title to receive the entire rent.[21] So also where a tenant did not deny the whole title of his landlord but set up the right of a third party as a co-sharer, there could be no forfeiture.[22] A co-sharer tenant representing a tenancy in the books of the landlord was entitled to bind his co-sharers for the purposes of the tenancy, but when he repudiated the tenancy he must be taken to have acted beyond the scope of his authority; consequently his disclaimer could not bind his co-sharers.[23] The denial of liability to pay rent on the ground of not having obtained possession could be treated as a repudiation or rescission of the lease.[24]

Under section 186A of the Bengal Tenancy Act, 1885 introduced by the Amending Acts of 1907 and 1908, a tenant who renounced his character as a tenant of the landlord by setting up, without reasonable or probable cause, title in a third person or himself, was liable to have a decree for damages passed against him. That section ran as follows:-

---

21. Sreemati Mallikadasi v. Makham (1905) 9 C.W.N. 928.
22. Neamatulla v. Bajiulla (1914) 26 I.C. 619.
23. Birendra v. Bhubaneswari (1912) I.L.R. 39 Cal. 903 at 905; Jharu v. Mahatabuddin A.I.R. 1928 Cal. 713.
24. Hara v. Jogendra (1904) 9 C.W.N. 387.

"186A.(1) when, in any suit between a landlord and tenant as such, the tenant renounces his character as tenant of the landlord by setting up without reasonable or probable cause title in a third person or himself, the Court may pass a decree in favour of the landlord for such amount of damages, not exceeding ten times the amount of the annual rent payable by the tenant, as it may consider to be just.

"(2) The amount of damages decreed under sub-section (1), together with any accruing due thereon, shall, subject to the landlord's charge for rent, be a first charge on the tenure or holding of the tenant; and the landlord may execute such decree for damages and interest, either as a decree for a sum of money or in any of the modes in which a decree for rent may be executed".

Remedies for illegal ejectment. - Section 89 of the Bengal Tenancy Act, 1885 provided that "no tenant shall be ejected from his tenure or holding except in execution of a decree". If a raiyat was ejected otherwise, his remedy was to bring a possessory suit under section 9 of the Specific Relief Act, 1877[25] and recover possession without proof of title.[26] That section runs as follows:-

"9. If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit....recover possession thereof, notwithstanding any other title that may be set up in such suit.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

---

25. The report of the Rent Law Commission, 1880, para.145.
26. Ramdoyal v. Upendra (1912) 17 C.W.N. 501.

No suit under this section shall be brought against the Secretary of State, the Central Government, the Crown Representative or any Provincial Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed".

The period of limitation for such a suit was six months only from the date of dispossession.[27] Besides this a raiyat was entitled to bring a regular suit to recover possession on proof of his title within two years from the date of dispossession.[28] Under section 9 of the Specific Relief Act, 1877, a raiyat could succeed only by showing previous possession within six months prior to the date of the institution of the suit.[29] But in a regular suit he was not entitled to recover possession merely on proof of previous possession and illegal ouster without reference to his title.[30] Where he sued on his title and failed to establish that title, he could not fall back upon mere possession and get a decree on that basis.[31]

We have already considered[32] that when a landlord entered on the holding of a raiyat on the ground of abandonment, the raiyat might institute a suit under section

---

27. The Indian Limitation Act, 1908, schedule 1, Art.3.
28. Urjoon v. Ramnath (1873) 21 W.R. 123.
29. The Bengal Tenancy Act, 1885, schedule III, Article 3.
30. Madan v. Sheikh Habi (1898) 2 C.W.N. clxxxiii (notes on cases).
31. Urjoon v. Ramnath (1873) 21 W.R. 123.
32. See p. 254.

87(3)[33] of the Bengal Tenancy Act, to recover possession. The period of limitation for such a suit was six months in case of non-occupancy raiyats, and 2 years in case of raiyats at fixed rates and occupancy raiyats. It ran from the date of publication of the notice.[34] The special limitation provided here applied only when the landlord entered on the land after giving the notice mentioned in section 87(2) of the Act. In other cases, the rule of limitation was two years as laid down in article 3, schedule III of the Bengal Tenancy Act, 1885 as amended by the Amending Acts of 1907 and 1908. Prior to the amendment it was held[35] that a suit by a non-occupancy raiyat for possession of his holding upon dispossession by his landlord otherwise than in execution of a decree was governed by article 120 or 142 of schedule I of the Limitation Act, 1908, under which the limitation was six and twelve years respectively. The effect of the amendments of 1907 and 1908 were to supersede this view.

Position of occupancy raiyats on sale of estate or tenure for arrears of revenue or rent. - An occupancy

---

33. See p.247.
34. The Bengal Tenancy Act, 1885, sec.87(3).
35. Tamizuddin v. Ashrub Ali (1904) 8 C.W.N. 446 F.B, overruling Bhagabati v. Luton (1902) 7 C.W.N. 218.

raiyat was protected from eviction at the instance of an auction purchaser of an estate sold for arrears of revenue.[36] We have explained above that the Revenue Sales Act, 1859 laid down that such a purchaser acquired "the estate free from all incumbrances", but he was not entitled "to eject any raiyat having a right of occupancy at fixed rent". That provision of the Act was interpreted to include the occupancy raiyats.[37] The Bengal Tenancy Act, 1885 also offered similar protection to an occupancy raiyat when the tenure within which his holding was situate was sold for arrears of rent. Section 159 of the Act laid down that a purchaser at a sale for arrears of rent should take subject to "protected interest" and section 160(d) declared "any right of occupancy" to be a protected interest.

Sec.3. Ejectment of non-occupancy raiyats.

Section 44 of the Bengal Tenancy Act, 1885 declared that "a non-occupancy raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise (namely):-

---

36. See p.594
37. Abdul v. Makbul (1914) 20 C.W.N. 185 at 186; Sarat v. Asiman (1904) 8 C.W.N. 601. = I.L.R. 31 Cal. 725.

(a) on the ground that he has failed to pay an arrear of rent;

(b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;

(c) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired;

(d) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired".

That section dealt with all the grounds on which a non-occupancy raiyat could be ejected.[38] The expression "and not otherwise" in the body of the section made it clear that besides the four grounds mentioned in the section, there was no other ground for the ejectment of a non-occupancy raiyat from his holding.[39] Express terms in a

38. Kinu v. Kiranbala (1933) 37 C.W.N. 586 at 590 = A.I.R. 1933 Cal. 653.
39. Wajihunnissa v. Fakira A.I.R. 1923 Pat. 94; Chandra v. Bissesswar (1892) 1 C.W.N. 158 at 159.

contract of lease did not enable a landlord to eject him on any ground other than those specified in that section, for section 178(1)(C) provided that "nothing in any contract between a landlord and a tenant made before or after the passing of this Act....shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act".

The provisions of section 44 of the Act implied that a raiyat who had obtained possession in good faith from a trespasser, was entitled to be treated as a non-occupancy raiyat, even as against the true owner and he could not be ejected by the latter except under that section.[40] Similarly although an ijaradar held for a term, a raiyat inducted by him on the land became a non-occupancy raiyat and was not liable to be ejected after the expiry of the ijara except upon one of the grounds mentioned in the section.[41]

Under clause(a) of section 44 of the Act, the first ground of ejectment of a non-occupancy raiyat was the failure to pay an arrear of rent. But he could not be ejected, except in execution of a decree passed on that

40. Binodlal v. Kalu (1893) I.L.R. 20 Cal. 708 F.B.
41. Atal v. Lakhi (1909) 10 C.L.J. 55.

ground.[42] A decree for ejectment could not be executed if the raiyat paid into court, within thirty days[43] from the date of the decree, the decretal amount and costs or[44] within such other period as the court might allow for the purpose.[45]

Under clause (b) the second ground of ejectment of a non-occupancy raiyat was that he had used the land in a manner which rendered it unfit for the purposes of the tenancy, or that he had broken a condition consistent with the provisions of the Bengal Tenancy Act, 1885 and on breach of which he was, under the terms of a contract between himself and his landlord, liable to be ejected. The language of that clause is similar to that of section 25,[46] which specified exactly identical grounds for the ejectment of any occupancy raiyat.[47] We have noted before what amounted to an improper use of the land. As to the breach of the condition on which a non-occupancy raiyat was liable to be ejected, the condition must be consistent with the provisions of the Act.[48] A condition which was

---

42. The Bengal Tenancy Act, 1885, sec.89.
43. Before the Bengal Tenancy (Amendment) Act, 1928 the period was fifteen days.
44. The Bengal Tenancy Act, 1885, sec.66(2).
45. Ibid., sec.66(3).
46. Supra, p.597.
47. See pp.188-90.
48. The Bengal Tenancy Act, 1885, sec.44(b).

inconsistent with the Act was null and void in terms of section 178(1)(C) of the Act, noted above. Even if he was liable to be ejected on the ground of the misuse of the land or breach of a condition consistent with the provisions of the Act, he could not be ejected, except in execution of a decree of the Court passed on those grounds.[49] Again section 155 laid down the procedure to be adopted for bringing a suit for ejectment on those grounds. We have considered in the preceding section the requirements of law in that section. We have also discussed the period of limitation for suits for ejectment on those grounds, a suit by co-sharer landlords, the measure of compensation to be awarded to the landlord and loss of the right to eject a raiyat on those grounds.

Under clause (c) the third ground of ejectment of a non-occupancy raiyat was that the term of a registered lease had expired. As the operation of that clause was not attracted, unless a raiyat was admitted to occupation of land under a registered lease,[50] it follows that where the lease was executed after he had already been let into possession with a view to continuance of his occupation,

---

49. Ibid., sec.89.
50. Kesho v. Jagdeo, A.I.R. 1933 Pat.261.

the clause had no application and he could not be ejected.[51] In Kamini v. Khodada[52] the learned Judges observed that "such a case falls within the express words of section 47 of the Bengal Tenancy Act by which, when a raiyat has been in occupation of the land and the lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by the lease. That being so, he can not be ejected under sub-section (c), section 44 of the Bengal Tenancy Act, which is limited to cases in which the raiyat has been admitted to occupation under the lease". Where a lease provided that a raiyat would quit the land whenever he was called upon by the landlord to do so, it was held[53] in a suit for ejectment that clause (c) applied when the lease was granted for a fixed term and that under section 178(1)(c) the stipulation in the lease could not be enforced. In Jotiram v. Janaki[54] it was said that "under the Bengal Tenancy Act, there is no raiyat, who holds from year to year and if the tenant is a non-occupancy raiyat, who does not hold under a lease for a term, he can not be ejected under the provisions of clause (c) of section 44". Where

51. Kamini v. Khodada (1905) 9 C.W.N. cclxxxvii.
52. Ibid.,
53. Nundo v. Kali (1898) 3 C.W.N. xlvii.
54. (1914) 20 C.W.N. 258 at 261.

a landlord set up a lease and sought to eject a raiyat on the ground that the term of the lease had expired, he could show that his occupation dated back to some time prior to the lease and therefore he could not be ejected under that clause; in such a case it was necessary for the court to determine if the lease in question was executed during the tenant's occupation of the land.[55] In other words section 47 of the Act was a bar, if it was found that the defendant held over, after the expiration of the first lease and before the execution of the second lease and the suit was brought to eject him after the expiration of the second lease.[56] In a Patna case[57] it was observed:- "A person who has been a raiyat may be inveigled by his landlord into executing a lease imposing upon him no harder terms than he has hitherto borne but stating that the lease is to come to an end after a certain fixed period of time. The object of sections 44(c) and 47 is to defeat this manoeuvre on the part of the landlord and for the purpose of counting the period of occupancy, the real period of occupation as a raiyat is to be taken into account and not the period of occupation which may happen to be

55. Rajani v. Yusuf (1916) 21 C.W.N. 188.
56. Sulaiman v. Uma (1924) 79 I.C. 648.
57. Kesho Prasad v. Ram A.I.R. 1932 Pat. 363 at 364.

stated in the lease. If, therefore, a defendant, who is sued by his landlord in ejectment on the ground that his lease has come to an end, is able to show that in fact before the date of the lease he was a raiyat and in occupation of that same land in that capacity, he is entitled to count the period of his occupation from the period when in fact he came into occupation as a raiyat". But clause (c) did not operate where a renewal clause took effect as a present demise.[58] In Banamali v. Kamala where a kabuliat created a lease for a period of five years at a certain rent and provided inter alia that if no fresh settlement were taken by the tenant after the term, he wouldcontinue to be a tenant as before; it was held that the kabuliat was a present demise for a further period of five years after the expiry of the first five years. On the expiry of the period of renewal, the tenant was liable to be ejected.[59]

Prior to the repeal of section 45 of the Bengal Tenancy Act, 1885 by the Amending Acts of 1907 and 1908, a landlord had to satisfy two conditions if he intended to avail himself of the provisions of clause(c). He was bound to serve a notice on the non-occupancy raiyat not less than six months before the expiration of the term.

---

58. (1934) 39 C.W.N. 906.
59. Ibid.,

If the tenant did not vacate, the landlord was bound to commence the suit for ejectment within six months from the expiration of the term. As that section was repealed in 1907 and 1908, no notice had to be served on the raiyat. Though that section was repealed, a new clause 1(a) was added to schedule III of the Bengal Tenancy Act, 1885 at the same time, to the effect that a suit to eject a non-occupancy raiyat on the ground of the expiration of the term of his lease must be instituted within six months from the expiration of the term of the lease. If the landlord failed to sue within that period, the tenant held over on terms of the expired lease and he could not thereafter be ejected under clause (c) to section 44 of the Act.[60]

Under clause (d) the fourth ground of ejectment of a non-occupancy raiyat was that "he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired". Under section 46(8) the Court was to pass a decree for ejectment, if the raiyat did not agree to pay the rent so determined by it under section 46(6). But if he agreed to pay that rent, he was entitled to remain in occupation of his holding for a term of five

60. Jotiram v. Janaki (1914) 20 C.W.N. 258 at 261.

years.[61] His right to hold for that period at that rent was a protected interest.[62] On the expiration of that term he was again liable to ejectment under the latter portion of section 44(d) unless by that time he had acquired the right of occupancy.[63] A decree for ejectment passed under section 46 took effect from the end of the agricultural year in which it was passed.[64]

Denial of the landlord's title was not among the grounds enumerated in section 44, which made a non-occupancy raiyat liable to ejectment. So a raiyat could not be ejected on that ground and it was expressly excluded by section 178(1)(c) of the Act.[65] But where the denial took place before the Bengal Tenancy Act, 1885 came into operation, the forfeiture being complete before the passing of the Act, it was held that the case was not affected by section 178 and was governed by the earlier law.[66] We have considered this point in the preceding section.

Similarly a transfer of a non-occupancy holding without the consent of the landlord did not work a

---

61. The Bengal Tenancy Act, 1885, sec.46(7).
62. Ibid., sec.160(e).
63. Ibid., sec.46(7).
64. Ibid., sec.46(10).
65. Debiruddin v. Abdur Rahim (1888) I.L.R. 17 Cal. 196; Chandra v. Bissesswar (1892) 1 C.W.N. 158.
66. Debiruddin v. Abdur Rahim (1888) I.L.R. 17 Cal. 196; Ananda v. Abrahim (1899) 4 C.W.N. 42.

a forfeiture. The landlord, though not entitled to khas possession in such a case, could, however, sue for a declaration that the transfer was not binding on him.[67]

A raiyat was given certain remedies against illegal ejectment which we have already considered in the preceding section.

Sec.4. Rights of ejected raiyats.

Under the Bengal Tenancy Act, 1885, any raiyat, on being ejected from his holding, under a decree of court or otherwise, was entitled to compensation for any improvements effected by him or his predecessor-in-interest.[68] Whenever the Court passed any decree for ejectment, it was obligatory upon it to determine the amount of compensation and make the decree for ejectment conditional on the payment of the amount to the raiyat.[69] The right of a raiyat to compensation for improvements could not be taken away by any contract with the landlord.[70] But where a raiyat made the improvement in pursuance of a contract or under a lease in consideration of some substantial advantage to be obtained by him and he obtained that advantage, he could not claim any compensation for such

67. Sheikh Gozaffur v. Dablish (1896) 1 C.W.N. 162; Chandra v. Bissesswar (1892) 1 C.W.N. 158.
68. The Bengal Tenancy Act, 1885, sec.82(1).
69. Ibid., sec.82(2).
70. Ibid., sec.178(1)(d).

improvement.[71] Thus a raiyat might obtain a lease on a reduced rental in consideration of clearing or digging a tank; and if, in pursuance thereto, he made the improvement, he would not be entitled to compensation therefor. Other cases of a similar character may easily be conceived. A raiyat would not be entitled to compensation if he voluntarily abandoned or surrendered his holding. Only an involuntary removal from his holding entitled him to compensation.[72] The principles of calculating the compensation was laid down in section 83 of the Act which ran thus:-

"83. (1) In estimating the compensation to be awarded under section 82 for an improvement, regard shall be had -

(a) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement;

(b) to the condition of the improvement, and the probable duration of its effects;

(c) to the labour and capital required for the making of such an improvement;

(d) to any deduction or remission of rent or any other advantage given by the landlord to the raiyat or under-raiyat in consideration of the improvement; and

(e) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the raiyat or under-raiyat has had the benefit of the improvement at an unenhanced rent.

---

71. Ibid., sec.82(3).
72. M. Finucane and Ameer Ali, op.cit.,p.369.

(2) When the amount of the compensation has been assessed, the Court may, if the landlord and raiyat or under-raiyat agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way".

The Act also gave to an ejected raiyat certain rights in respect of crops and land prepared for sowing.[73] When The Bengal Tenancy Bill, 1884, was under discussion Mr.P.M. Mukherji moved an amendment to omit that provision of the Act. He thus explained the object of the amendment:-[74] "The provisions contained in this section are opposed to the judge-made law on the subject. It has been held by the Hon'ble Judges of the High Court that, when a tenant is ejected by order of Court, the crops on the land go with the land to the landholder. But this section provides elaborate rules for the purpose of giving the raiyat a right to enter upon the land and to rear and reap the crops after he has been ejected. When a decree for ejectment severs all connection between the raiyat and his landlord, I do not see what considerations can justify such a provision. The Bill shows no consideration for the crops of occupancy raiyats, which would go to the purchaser by sale of their holdings. Why should non-occupancy raiyats be deemed entitled to greater consideration in this respect,

---

73. The Bengal Tenancy Act, 1885, sec.156.
74. Selections, p.593.

specially when they may protect themselves from ejectment by payment of the amount due by them?"

In opposing the amendment Sir Steuart Bayley said:-[75] "I would point out that the obvious difference between sale and ejectment is this; when a raivat is sold up he gets the money which includes the value of the crop on the ground. Why when he is ejected should he lose it?[76] In regard to this point the Rent Law Commission said:-

'There are in the existing law no provisions as to the away-going crop; and, as a natural consequence, when a tenant is ejected while the crop is on the ground, the right to this crop is a constant source of dispute and litigation. We have enacted that, when a ryot is ejected in execution of a decree - and this we have just shown, is the only way in which he can be ejected - and there are upon the land at the time of the ejectment growing crops or other ungathered products of the earth, which but for the ejectment such ryot would have been entitled to reap or gather, such ryot shall, notwithstanding such ejectment, be entitled to reap or gather such crops or or products, and may use the land for the purpose of tending, reaping, gathering, and removing the same; and,

75. Selections, p.593.
76. The report of the Rent Law Commission, 1880, para.145.

in the event of his doing so, he shall be liable to pay a reasonable sum for the use and occupation of the land for these purposes. We have, however, thought it reasonable to allow the landlord an option of taking such crops or products at a reasonable valuation, if he gives notice of his intention to do so at the time when he applies for execution. If the landlord and tenant can not agree as to the value of the crops or products, the Court may, upon the application of either of them, determine such value, and the order so determining such value shall have the force of a decree'. The principle seems a very sound one that the landlord should not, by choosing him time for ejectment, not only ruin his raiyat but should himself benefit by the crop in the ground, which the raiyat has sown and which he is entitled to reap". The amendment was put/and negatived.

to vote

Under the Bengal Tenancy Act, 1885, when a raiyat had, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he was entitled, at the option of the landlord, either to retain possession of that land on such terms as the Court might deem reasonable, until the crops were reaped or to receive from the landlord the value of the crops as estimated by the

Court.[77] When he had, before the date of his ejectment, prepared for sowing any land comprised in his holding but had not sown or planted crops in that land, he was entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest.[78] But he was not entitled to retain possession of any land or receive any sum in respect thereof when, after the commencement of proceedings by the landlord for his ejectment, he had cultivated or prepared the land contrary to the local usage.[79] If the landlord elected to allow him to retain possession of the land, he had to pay to the landlord, for the use and occupation of the land during the period for which he was allowed to retain possession of the same, such rent as the Court executing the decree for ejectment might deem reasonable.[80] The provision of the Act in respect of the rights of the ejected raiyat in crops and land prepared for sowing was more elaborate than that ~~what~~ which was originally proposed by the Rent Law Commission, 1880. The relevant extract from the report of the Commission is noted above.

---

77. The Bengal Tenancy Act, 1885, sec.156(a).
78. Ibid., sec.156(b).
79. Ibid., sec.156(c).
80. Ibid., sec.156(d).

79. Ibid., sec.156(c).
80. Ibid., sec.156(d).

The branch of the law which relates to the rights of an ejected raiyat, in respect of crops and land prepared for sowing, is generally known as the law of emblements. The word 'emblements' has a technical sense in the English law meaning "a right given by law in certain cases to the tenant of an estate of uncertain duration, which has unexpectedly determined, without any fault of such tenant, to take the crops growing upon the land when his estate determines.....The growing crops or the vegetable productions of the soil which are annually produced by the labour of the cultivator are emblements".[81] In this sense of the term there was no law of emblements in India so far as agricultural holdings were concerned.[82]

---

81. Woodfall, op.cit., p.809.
82. Akhil v. Surendra (1905) 11 C.L.J. 87; Lakhan v. Jainath (1907) I.L.R. 34 Cal. 516 at 523 and 538 F.B.

CHAPTER 9

Conclusion.

This study of the Bengal Tenancy Act, 1885, reveals that it was the Magna Charta of the Bengal raiyats. It was the result of the endeavours of the British Government in India to redeem the pledge given at the time of the Permanent Settlement of 1793 for protecting the raiyats against the zemindars. When the Bengal Tenancy Bill of 1883 was first introduced in the Council, Lord Ripon in his Presidential speech said:- "We have endeavoured to make a settlement, which, while it will not deprive the landlords of any of these accumulated advantages, will restore to the raiyats something of the position which they occupied at the time of the Permanent Settlement, and which we believe to be urgently needed; in the words of that settlement, for the protection and welfare of the raiyats and other cultivators of the soil, whose interests we then undertook to guard, and have, to our shame, too long neglected."[1] At the end of the debate on the Bill His Excellency the President of the Council (Lord

---

1. Selections, p. 146.

Dufferin) said:- "I believe That it is a translation and reproduction in the language of the day of the spirit and essence of the Lord Cornwallis' settlement, that it is in harmony with his intentions, that is carried out his ideas, that it is calculated to ensure the results he aimed at and that it is conceived in the same beneficent and generous spirit which actuated the original framers of the Regulations of 1793."[2]

The Bengal Tenancy Act, 1885 was the most important agrarian measure which was passed since the Regulations of 1793. It was the outcome of prolonged research into the conditions of the zemindars and raiyats of Bengal by the Rent Law Commission, 1880 and the hard labour of a band of distinguished Councillors of the Viceroys and Governors-General of India, urged on by the excellent intention of the British Government at home." "Perhaps no legislative enactment was ever subjected to fuller examination or more searching criticism. The question had engaged the attention of the Government and the public for more than ten years; the Select Committee, which included members holding the most diverse views, held no less than 64 meetings, and

---

2. Ibid.,p.616.

had before it several hundreds of reports, opinions and materials".[3] The Act of 1885 had completely recast the provisions of the Rent Acts of 1859 and 1869 in the matter of accrual of occupancy right, suits for enhancement, reduction and recovery of arrears of rent. Under that Act a raiyat became a "settled raiyat" and acquired the right of occupancy in all the lands he held in a village provided he held any land for 12 years in the village.[4] To acquire the right of occupancy it was not necessary to hold the same plot of land for 12 years as was the case before the Act of 1885.[5] The main object of the Act was to give the settled raiyat the same security in his holding as he enjoyed under the old customary law. A good example of which will be found in the clause which threw upon the landlord the onus of disproving the raiyat's claim to a right of occupancy. It was laid down that in any proceedings between a raiyat and his landlord it was to be presumed that he was a settled raiyat until the contrary was proved.[6] In pursuance of the

---

3. Bengal Supplementary Administrative report 1882-87,p.97.
4. See pp. 114, 172.
5. See pp. 116, 117.
6. See p.116.

main principles of the Act, rules were laid down to guide the Courts in determining whether a tenant was a tenure-holder or a raiyat.[7] It described the various rights and obligations of the different classes of raiyats. It contained provisions limiting the right of contract between landlord and tenant and prohibited the latter from surrendering by contract the rights conferred upon them by the Act.[8] It simplified and facilitated suits for enhancement and reduction of rent. It laid down rules for the enhancement of a raiyat's rent. If the rent of an occupancy raiyat had once been enhanced by contract or suit, no suit for further enhancement of his rent would lie until after the expiry of 15 years[9] except on the ground of landlord's improvement.[10] If a non-occupancy raiyat objected to pay an enhanced rent, he could have his rent fixed by the Court.[11] If he agreed to pay the rent determined by the Court, he was entitled to remain in occupation of the land at that rent for 5 years.[12] The Act prescribed the rules for instalment for the payment

---

7. See pp. 68-84.
8. See pp. 292-94.
9. See p.490.
10. See p. 491.
11. See p. 508.
12. Ibid.

of rent,[13] for granting receipts on payment of rent[14] and interest upon arrears of rent.[15] It encouraged the making of improvements by the raiyats of their holdings[16] and they were entitled to claim compensation for it in the event of eviction.[17] It was declared that they could not be ejected from their holdings except in execution of a decree.[18] A strong safeguard was provided against harassment of the raiyats by too frequent rent suits.[19] A decree for arrears of rent could not be executed by any one who did not acquire the landlord's interest.[20] The Act provided for cases in which holdings were surrendered[21] or abandoned;[22] it prevented the realisation of abwab and other illegal impositions.[23] It laid down the procedure for recovery of arrears of rent[24] and declared the interest of raiyats to be protected from annulment.[25]

After the passing of the Bengal Tenancy Act, 1885 Government carefully watched the working of the Act.

---

13. See p. 375.
14. See p. 392.
15. See p. 383.
16. See pp. 259-64.
17. See pp. 654-55.
18. See pp. 592, 596, 646.
19. See pp. 538,539.
20. See pp. 555-61.
21. See pp. 233-45.
22. See pp. 245-59.
23. See pp. 423-24.
24. See pp. 538-50.
25. See pp. 594-95, 644, 653.

Whenever any defect was found, it was remedied by amendment. The Amending Act of 1898 made some important alterations in the provisions relating to enhancement of rent.[26] It was laid down by the Acts of 1907 and 1908 that no revenue or Civil Court would give effect to agreements or compromises between landlords and tenants, the terms of which, if embodied in a contract, could not be enforced under the Act.[27] The raiyats were also given further rights by subsequent amendments. The Act of 1925 was undertaken with the object of conferring the status of settled raiyat on certain tenants of some parts of the Sundarbans which were subsequently constituted villages within the meaning of the Act.[28] Radical changes were introduced in the Act of 1928; viz., (a) Statutory recognition was given to the right of transferability of an occupancy holding subject to payment of certain salami (transfer fee) to the landlord and landlord's right of pre-emption.[29] (b) Full right was given to occupancy raiyats in respect of all trees on the land.[30] (c) In order to prevent land

---

26. See pp. 360-61, 461, 465, 472.
27. The Bengal Tenancy Act, 1885, sec. 147A; also see pp. 503, 538.
28. The statement of objects and reasons of the Bill of 1925 = Calcutta Gazette dated 15th January 1925, part IV, p.2; also see p. 115.
29. See pp. 220,221.
30. See pp. 198, 199.

from passing to mortgagees for indefinite periods, occupancy raiyats were allowed to usufructuary mortgages for a period of 15 years.[31] (d) The provisions relating to distraint were omitted.[32] The next important amendment came in 1938, the object of which was to lessen the burden on the raiyats. Under that amendment the landlord's transfer fee was abolished and also the landlord's right of pre-emption but a right of pre-emption in favour of co-sharer occupancy raiyat was recognised.[33] Facilities were given to an usufructuary mortgagor of occupancy holding to regain possession of his property.[34] The rate of interest on arrears of rent was reduced from 12½ p.c. to 6¼ p.c.[35] Landlords were made liable to fine for realization of abwab.[36] The provisions for realizing rent by certificate were abolished;[37] increased facilities were given to sub-division of holdings.[38] There were provisions for abatement of rent on account of diluvion[39] and for re-entry when

---

31. See p. 223.
32. See p. 580.
33. See p. 221.
34. The Bengal Tenancy Act, 1885, sec. 26G, sub-sec.2.
35. See p. 385.
36. See p. 424.
37. See p. 589.
38. See pp. 277-78.
39. See pp. 364, 374.

vanished land re-appeard.[40] The provisions relating to enhancement of rent were suspended for a period of ten years.[41] Then came the Act of 1939 which provided that the landlord should not get a decree for additional rent merely because a recent measurement had shown an increase in the area of the tenancy.[42] The Act of 1940 widened the definition of a complete usufructuary mortgage by including "every mortgage including a mortgage by conditional sale, entered into by an occupancy raiyat in respect of his holding or of a portion or share thereof in which possession of land is delivered to the mortgagee". The same Act of 1940 brought a far-reaching change in the law governing execution of decrees for arrears of rent, by providing that a decree for arrears of rent, whether in the form of a rent decree or a money decree, could only be executed by sale of the defaulting holding.[43] By the Act of 1947 the provisions relating to enhancement of rent were again suspended for another five years with effect from 27th August 1947.[44]

---

40. The Bengal Tenancy Act, 1885, sec.86A, sub-sec 2,cl(a).
41. See pp. 490,509-10.
42. See pp. 356-57.
43. See pp. 550-51.
44. See p. 510.

It is now apparent that the Bengal Tenancy Act, 1885 with its subsequent amendments brought security, ease and comfort to the Bengal raiyats. Apart from their liability to pay rent they were almost the owners of their holdings, though an occupancy raiyat could not use the land in any manner which would materially impair the value of the land or render it unfit for the purpose of the tenancy.[45] Considering the effect of the laws that were passed since the grant of Dewani in 1765 on the status of the Bengal raiyats, we may conclude that the years between 1885 and 1947 under the famous Bengal Tenancy Act, 1885 was for them the most propitious period during the 182 years of British Rule in India. Within that period of peaceful administration they were given by legislation rights and privileges as a result of which they were happy and prosperous.

The Government did not stop there. It always showed concern for the means by which the raiyats could be brought under direct control of Government. In the early part of the 19th century the United Kingdom Government expressed approval of a policy whereby every zemindary tenure should be "purchased on the part of the Government and then

---

45. See p. 188.

settled with the ryots on the ryotwar[46] principle".[47] The Select Committee of the House of Commons that sat in 1830 also suggested that "Government might acquire zemindaries by private or public purchase, in order to protect the raiyats' rights, provided that the outlay involved was not so great as to prevent the working of such a scheme".[48] But it was not possible at that time to accept that suggestion of the Committee. In 1938 a high powered Commission was set up under the Chairmanship of Sir Francis Floud to report inter alia "whether it is practicable and advisable for Government to acquire all the superior interests in agricultural land so as to bring the actual cultivators into direct relation with the Government".[49] After a laborious investigation for two years into the land tenure system prevailing in Bengal from the Hindu period down to the then

---

46. ryotwar = "According to, or with ryots. A ryotwar settlement is a settlement made by Government immediately with the ryots individually, under which the Government receives its dues in the form of a money rent fixed on the land itself in cultivation" (Glossary to the Fifth Report from the Select Committee of the House of Commons, 1812).
47. The report from the Select Committee of the House of Commons, 1832.
48. The report of the Land Revenue Commission, Bengal dated 21st March, 1940, Vol.I, para 55.
49. The report of the Land Revenue Commission, Bengal, dated 21st March 1940, Vol.I, para 10; The Times of London dated 19th April, 1965, p.10, Col.5.

existing system, the majority of the Commission recorded their considered opinion that whatever might have been the justification for the Permanent Settlement in 1793, it was no longer suited to the conditions of the present time and that it had ceased to serve any national interest.[50] Accordingly they recommended that the interests of all classes of rent-receivers should be acquired on reasonable terms so that the actual cultivators might become tenants holding lands direct under the Government.[51] The Bengal Administrative Enquiry Committee, 1945 also expressed their deliberate opinion that "so long as the present outmoded system of land tenure remained the administrative machinery of Government, being clogged by it at every turn, was bound to fail to achieve its maximum result in the exploitation of land and water resources of the province."[52]

The Government could not give proper attention to the matter immediately after the publication of the Floud Commission report as they were then engaged in the Second World War. After the cessation of the hostilities, the legislature, in

---

50. The report of the Land Revenue Commission, Bengal, dated 21st March, 1940, Vol.1, para 96.
51. Ibid.
52. Statement of objects and reasons of the Bengal State Acquisition and Tenancy Bill, 1947.

the light of the recommendations of the Commission,brought the Bengal State Acquisition and Tenancy Bill on the 10th April, 1947 "to provide for the acquisition by the Crown of the interests of rent-receivers and certain other interests in land in Bengal and to define the law relating to agricultural tenancies to be held under the Crown after such acquisition and other matters connected therewith".[53] In the Statement of objects and reasons of that Bill it was stated as follows:-

"Government have accordingly decided to accept the policy of bringing the actual cultivators into direct relation with Government by acquiring the interests of all classes of rent receivers as well as all interests in hats, bazars (market), forests, jungles, water courses or marshy tracts with private right of fisheries and sandy chars, on payment of compensation on the basis of net profit according to the nature and circumstances of each interest and also to set up a machinery for the purpose. It is also considered necessary that all surplus cultivable lands held by proprietors, tenure-holders and raiyats in

---

53. The Bengal State Acquisition and Tenancy Bill of 1947, pre-amble.

excess of certain prescribed standard should be acquired with a view to their distribution amongst petty cultivators, landless labourers and bargadars so as to provide them with economic holdings. Provisions are also necessary for regulating the rights and interests of tenants who will come into direct relation with Government as the sole landlord consequent on the acquisition of all rent receiving interests in any area. It is considered that there should be only one class of tenants, namely, raiyats with full rights of occupancy. Transfer of land of a raiyat should be permissible only to a bona fide cultivator owning land below a certain limit. Sub-letting of land should be absolutely interdicted except in certain special cases and sub-division of holding should be restricted up to a limit in order to prevent creation of too many uneconomic holdings which have produced a most baneful effect on the present agricultural economy of the Country. Provisions for consolidation or enlargement of scattered holdings should also be made with a view to facilitate co-operative farming and mechanised cultivation. The new scheme of tenancy law as envisaged should enable lands to be retained only by bona fide cultivators and prevent transfer to non-agriculturists or accumulation of large areas in the hands of a fewer people."

But it was not possible on the part of the British Administration to pass that Bill into an Act within the short time that remained at their disposal; the administration was handed over to the Government of India and Pakistan in August 1947.

After Independence the East Pakistan Government in 1950 published a Bill based on the Bill of 1947, providing inter alia for the abolition of the zemindary system in that part of Pakistan. The Bill was enacted in 1951 as the East Bengal State Acquisition and Tenancy Act, 1950. Similarly the West Bengal Government passed in 1954 the West Bengal Estate Acquisition Act, 1953. Under both the Acts the interests of the rent-receivers within the respective provinces in the two countries are acquired. Subsequently the West Bengal Government passed in 1956 the West Bengal Land Reforms Act, 1955 dealing inter alia with the rights and liabilities of the raiyats. Under that Act and the East Bengal Act of 1951, the Bengal Tenancy Act, 1885 was repealed. Under both the Acts the classification of raiyats are abolished; there is only one class of tenant, namely a raiyat. A raiyat's holding is a permanent tenure direct under the Government. He is the owner of his holding which

is heritable and transferable. There is no longer any restriction in the user; he may use his land in any manner he likes. Regarding the total area allowed to be retained in the possession of a raiyat the law is different in the two countries. According to the West Bengal version no raiyat can hold more than 25 acres excluding his homestead.[54] According to the East Bengal version the aggregate quantity of lands will "not exceed 375 standard bighas or an area determined by calculating at the rate of ten standard bighas for each member of his family, which ever is greater".[55] That Act also deals with the incidents of raiyats' holdings, purchase and acquisition of lands, enhancement and reduction of rent, amalgamation, sub-division and consolidation of holdings etc., which are beyond the scope of this essay.

By the abolition of the zemindary system both in West Bengal and East Pakistan, the raiyats regained their ancient rights to hold land direct under the Government as they were under the Hindu and Muslim Governments which preceded the East India Company.

---

54. The West Bengal Land Reforms Act, 1955, sec.4.
55. The East Bengal State Acquisition and Tenancy Act, 1950, sec.20 as amended by the East Pakistan Ordinance No.XV of 1961 = Dacca Gazette extraordinary, dated 28th April, 1961, p.844.

Of late serious attention has been given to improvement of the condition of the raiyats in East Pakistan. Facilities are afforded to them to cultivate more land and to grow more food. Elaborate schemes have been drawn up for consolidation of holdings and mechanized cultivation. A gigantic project is laid out to control inundation which is the chief menace to the prosperity of the raiyats in East Pakistan at the moment. If this project is successful, East Pakistan with her fertile land may become the granary of the Commonwealth.

TABLE OF CASES

Page

Abbas v. Premsukh, (1919) 58 I.C. 878. 376, 380,
Abdul v. Abdul, (1911) 16 C.W.N. 618. 232,
Abdul v. Ahmed, (1887) I.L.R. 14 Cal. 795. 207,
Abdul v. Ali, (1930) I.L.R. 58 Cal. 869. 253,
Abdul v. Kutban, (1897) 1. C.W.N. cl xxi. 153,
Abdul v. Makbul, (1914) 20 C.W.N. 185. 644,
Abdul v. Mohini, (1900) 4 C.W.N. 508. 347, 359,
Abdul v. Prasanna, (1924) 85 I.C. 770. 427,
Abdul v. Rajendra, (1909) 13 C.W.N. 635. 347,
Abdul v. Sheikh, A.I.R. 1925 Cal. 426. 369,
Abdul Gafur v. Ali Meah, (1923) 28 C.W.N. 805. 531, 532,
Abdul Gani v. Angri, A.I.R. 1930 Cal. 205. 429,
Abhay v. Hem, (1929) 33 C.W.N. 715. 447,
Achala v. Bejoy, (1934) 38 C.W.N. 974. 366, 370,
Afiladdi v. Satish, (1916) 34 I.C. 497. 599, 600,
Ahsanullah v. Mohini, (1899) I.L.R. 26 Cal. 739. 359,
Ajodhya v. Ram, (1908) 13 C.W.N. 661. 168, 169,
Ajoodhya v. Imam Bandi, (1867) 7 W.R. 528 F.B. 201, 206,
Ajuhannassa v. Hakim, (1909) 13 C.W.N. cciii. 499,
Akbar v. Sukhdeo, (1911) 13 C.L.J. 467. 546,
Akhil v. Hasan, (1913) 19 C.W.N. 246. 122,
Akhil v. Ramani, A.I.R. 1933 Cal. 824. 531, 533,
Akhil v. Surendra, (1905) 11 C.L.J. 87. 660,
Aktowli v. Tarak, (1912) 17 C.W.N. 774. 464,
Akul v. Ameenoodeen, (1879) 5 C.L.R. 41. 464,
Alam v. William, (1864) W.R.Gape vol. (Act X) 31. 596,
Alauddin v. Tamizuddin, (1937) 41 C.W.N. 1001. 149, 469,
Alep v. Raghunath, (1896) 1 C.W.N. 310. 469,
Ali v. Nayan, (1903) 15 C.L.J. 122. 231,
Alimuddin v. Hiralal, (1895) I.L.R. 23 Cal.87 F.B. 522,
Allender v. Dwarkanath, (1871) 15 W.R. 320. 208,
Amar v. Bakshi, (1874) 22 W.R. 228. 116,
Amar v. Prasana, (1920) 25 C.W.N.8. 183,
Amarnath v. Raja Krishna Das, (1921) 35 C.L.J. 138. 95,
Ameen v. Bhyro, (1874) 22 W.R. 493. 208,
Aminaddin v. Chandranath, (1928) 48 C.L.J. 390 = A.I.R.1929 cal.120. 250, 251,
Ananda v. Abrahim, (1899) 4 C.W.N. 42. 627, 653,
Anandamoyee v. Saudamini, (1922) 27 C.W.N. 502. 390,
Ananga v. Habibulla, A.I.R. 1931 Cal. 673. 531,
Annanda v. Mathura, (1909) 13 C.W.N. 702. 431, 441,

Page

Anund v. Bissonath, (1872) 17 W.R. 416. 187,
Arun v. Durga, (1941) 45 C.W.N. 805. 150,
Arunchandra v. Shamsul, (1931) I.L.R. 59 Cal. 155 F.B. 364,370,
Ashraf v. Ram, (1875) 23 W.R. 288. 166,
Ashutosh v. Joylal, (1912) 18 I.C. 621. 442,
Askaran v. Deolal, A.I.R. 1929 Pat. 568 F.B. 496,
Aswini v. Harkumar, (1928) 32 C.W.N.1111. 251,255,
Atal v. Lakhi, (1909) 10 C.L.J. 55. 646,
Attimoollah v. Sheikh, (1871) 15 W.R. 149. 164,
Atul v. Zahed, A.I.R. 1941 Cal. 102. 536,
Augur v. Mohinee, (1865) 2 W.R. (Act X) 101. 596,
Auluck v. Dinonath, (1875) 24 W.R. 421. 530,
Azim v. Ramlall, (1897) I.L.R. 25 Cal. 324. 143,144,315,
Babu Ram v. Mahendra, (1904) 8 C.W.N. 458. 150,
Bahadur v. Sanyasi, (1943) 47 C.W.N. 287. 551,
Baichal v. Shaik, (1894) 1 C.W.N. 152. 535,
Baidya v. Sudharam, (1904) 8 C.W.N. 751. 77,
Baikuntha v. Chandra, (1929) 33 C.W.N. 1023. 253,
Bakranath v. Binodram, (1868) 1 B.L.R. (F.B.)25. 342,
Banamali v. Kamala, (1934) 39 C.W.N. 906. 651,
Banarasi v. Makhan, (1903) I.L.R. 30 Cal.947. 383,
Banee v. Joy Kishen, (1869) 12 W.R. 495. 612,613,
Bangshidhar v. Prolhad, (1943) I.L.R. Cal. 221. 154,
Barada v. Bhupendra, (1923) I.L.R. 50 Cal. 694. 185,
Barry v. Abdool, (1864) W.R.Gape vol.(Act X) 64. 370,
Bata v. Manindra, (1914) 19 C.W.N. 321. 496,
Batasu v. Jaiti, (1899) 3 C.W.N. lxii. 550,
Beckwith v. Kishto, (1863) Marshall's Reports,278. 386,
Beharilal v. Nasimannessa, A.I.R. 1923 Cal.527. 380,
Behary v. Bhutnath, (1898) 3 C.W.N. 214. 549,
Bejoy v. Krishna, (1917) 21 C.W.N. 959. 428,430,
Beni v. Bhuban, (1890) I.L.R. 17 Cal. 393. 162,
Beni v. Chaturi, (1906) I.L.R. 33 Cal. 444. 164,
Beni v. Krishna, (1919) 70 I.C. 177. 366,
Beni v. Lalmoti, (1898) 6 C.W.N. 242. 536,537,
Beni v. Rewat, (1897) I.L.R. 24 Cal.746. 543,
Bepin v. Krishna, (1905) 9 C.W.N. 265 F.B. 493,
Bepin v. Priya, (1933) 37 C.W.N. 720. 505,509,
Bepin v. Sib, (1917) 43 I.C. 801. 606,
Bhabani v. Pratap, (1904) 8 C.W.N. 575. 550,
Bhagaban v. Palturam, (1916) 32 I.C. 749. 471,
Bhagabati v. Basanta, (1906) 11 C.W.N. 110. 391,
Bhagabati v. Luton, (1902) 7 C.W.N. 218. 643,
Bhajan v. Balai, A.I.R. 1923 Cal. 375. 113,

Page

Bharut v. Gunga, (1870) 14 W.R. 211. 208,
Bhoobunjoy v. Ram, (1869) 9 W.R. 449. 143,
Bhuggobut v. Doorg, (1871) 16 W.R. 94. 164,
Bhugwan v. Jug, (1873) 20 W.R. 308. 166,
Bhugwan v. Raghunath, (1909) 11 C.L.J. 477. 522,
Bhupendra v. Trinayani, (1937) 42 C.W.N. 758. 624,
Bhutan v. Surendra, (1909) 13 C.W.N. 1025. 120,
Bijonbala v. Mathura, (1930) 35 C.W.N. 51. 562,563,
Bindeshwari v. Kesho, (1926) 31 C.W.N. 74. 110,
Binodlal v. Kalu,(1893) I.L.R.20 Cal.708 F.B. 67,143,144,646,
Bipradas v. Rajaram, (1909) 13 C.W.N. 650. 554,
Birendra v. Bhubaneswari,(1912) I.L.R. 39 Cal.903. 640,
Birendra v. Laksmi, (1913) 22 C.L.J. 129. 348,
Biressur v. Jogendra, (1875) 24 W.R.261. 363,530,
Bireswar v. Jogendra, A.I.R.1929 Cal.413. 364,370,
Bisheswar v. Ali, (1921) 63 I.C. 500. 243,
Bishnu v. Charu, A.I.R. 1930 Cal. 823. 386,
Bisseswar v. Kali Charan, A.I.R.1926 Cal. 908. 452,
B.N.Railway v. Farm Balmukunda,(1923) 80 I.C.200. 615,
B.N.W.R v. Janki, A.I.R. (1936) Pat.362. 111,
Bodardoja v. Ajijuddin, A.I.R. 1929 Cal.651. 606,609,
Boidonath v. Aupurna, (1881) 10 C.L.R.15. 245,
Boidya v. Ghisu, (1903) I.L.R.30 Cal.1063. 604,606,624,
Bollye v. Akram, (1879) I.L.R. 4 Cal.961. 157,
Bonomalee v. Delu, (1875) 24 W.R.118. 235,
Bool v. Lutho, (1875) 23 W.R.387. 127,128,
Bootee v. Moorut, (1873) 20 W.R.478. 206,
Brajendra v. Woopendra, (1882) I.L.R. 8 Cal.706. 350,
Brij v. Sheo, (1916) 39 I.C. 85. 473,
Brojobasi v. Ram, (1915) 23 C.L.J. 638. 143,144,159,
Brojonath v. Heera, (1868) 10 W.R. 120. 364,373,
Budhna v. Juggessur, (1875) 22 W.R. 4. 414,
Bullen v. Lalit, (1869) 3 B.L.R. App. 119. 431,
Buzlul v. Satis, (1908) 15 C.W.N. 752. 213,
Bykuntnath v. Bissonath, (1868) 9 W.R. 268. 235,
Catherine v. Huro, (1867) 8 W.R. 284. 334,
Chamatkari Dasi v. Trigunanath,(1913) 17 C.W.N.833. 322,
Chandi v. Hamid, A.I.R. 1925 Cal. 1208. 370,
Chandra v. Amjad, (1920) I.L.R. 48 Cal. 783.F.B. 229,
Chandra v. Bissessar, (1892) 1 C.W.N. 158. 629,645,
653,654,
Chandra v. Jiban, (1924) 29 C.W.N. 290. 164,

Page

Chandrabati v. Harrington, (1890) I.L.R. 18 Cal. 349 P.C. 171,
Chandra Binod v. Ala Bux, (1920) I.L.R.48 Cal.184 S.B. = 24 C.W.N.818 S.B. 84,85,86, 107,108, 110,215,
Chandra Kanta v. Rama Nath,(1910) 11 C.L.J.591. 441,
Chhatrapat v. Gopichand,(1899) I.L.R.26 Cal.750. 557,564,
Chitpore Golabari v. Girdhari,A.I.R.1925 Cal.530. 531,
Chowdhry v. Gour,(1865) 2 W.R.(Act X) 40. 474,
Chunder v. Sirdar, (1872) 18 W.R.218. 596,616,
Chultan v. Tilukdari,(1885) I.L.R.11 Cal.175 F.B. 416,426,
Church v. Ram,(1869) 11 W.R.547. 152,
Chytunno v. Kedarnath,(1870) 14 W.R.99. 375,
Dabiruddin v. Midnapore Zemindary,(1920) 57 I.C.850. 496,
Dad Ali v. Jamiruddin,A.I.R.1934 Cal.715. 349,
Dakhyani v. Mono,(1913) 19 C.W.N. 407. 143,144,
David v. Ramdhan, (1866) 6 W.R.(Act X) 97. 347,
Dayamayi v. Ananda,(1914) 18 C.W.N.971 F.B. 214,215, 216,217,
Dayal v. Nabin, (1871) 8 B.L.R.180. 529,530,
Debendra v. Bibudhendra,(1918) 22 C.W.N.674 P.C. = I.L.R.45 Cal.805 P.C. 75,80, 81,
Debiruddin v. Abdur Rahim,(1888) I.L.R.17 Cal.196. 627,629, 638,653,
Deendyal v. Thukroo, (1866) 6 W.R. (Act X) 24. 364,371,
Deolal v. Bindeswari,A.I.R. 1929 Pat.440. 535,
Dhanukdhari v. Nathima,(1907)11 C.W.N. 848. 616,617,
Dharani v. Rajani,A.I.R. 1934 Cal. 146. 452,
Dheput v. Halal,(1864) W.R.Gape vol. 279. 185,
Dhirendra v. Bhabatarini, (1928) 33 C.W.N. 367. 450,
Dhirendra v. Radha, (1920) 57 I.C. 758. 189,
Dhora v. Ram, (1890) I.L.R. 20 Cal.101. 629,638,
Dhunput v. Gooman,(1864) W.R.Gape vol. (Act X) 61. 64,224,
Dhunput v. Mahomed Kazim, (1896) I.L.R.24 Cal.296. 436,437, 440,442,453,
Dhunput v. Shamsoonder, (1879) I.L.R. 5 Cal. 291. 318,
Dhunraj v. Ooggur, (1871) 15 W.R.2. 463,
Dina v. Sashi, (1915) 20 C.W.N. 550 = 22 C.L.J.219. 153,156,160,
Dinanath v. Raja Sati Prasad, (1922) 72 I.C.663. = 36 C.L.J.220 = 27 C.W.N.115. 91,100,103, 104,105,
Domunoolah v. Mahmondie, (1869) 11 W.R.556. 122,
Doorga v. Brindabun, (1869) 11 W.R. 162. 206,
Doorga v. Sree Janoo, (1872) 18 W.R. 465. 629,
Dukha v. Manabati, A.I.R. 1935 Pat. 194. 369,

	Page
Dulhin v. Balla, (1898) I.L.R. 25 Cal. 744 F.B.	92,106,
Dulhin v. Bansidhar, (1911) 16 C.W.N. 904.	546,
Dulli v. Meher, (1867) 8 W.R. 138.	616,
Dumree v. Bissessur, (1870) 13 W.R. 291.	226,256,
Durga v. Kalidas, (1881) 9 C.L.R. 449.	65,225,
Durga v. Rajendra, (1913) I.L.R. 41 Cal. 493 P.C.	380,
Durga v. Umdatannissa, (1872) 9 B.L.R.113. = 18 W.R.235.	65,146, 152,225,
Dwarka v. Atul, (1919) I.L.R. 46 Cal. 870.	560,
Dwarka v. Hurrish, (1879) I.L.R. 4 Cal. 925.	206,
Dwarka v. Nalinee, (1937) I.L.R. 2 Cal. 689.	111,
Dwarkanath v. Noboo, (1870) 14 W.R. 193.	160,
Dwijendra v. Aftabuddin, (1916) 21 C.W.N.492.	442,443,453,
Ebadali v. Fatema, (1926) 100 I.C. 501.	449,
Edgell v. Biswanath, (1921) 62 I.C. 59.	110,
Ejel v. Felai, (1914) 21 C.L.J. 309.	360,
Ekabbar v. Hara, (1910) 15 C.W.N. 335.	637,638,
Elahee v. Roopun, (1867) 7 W.R. 284.	333,334,335,
Elias v. Manoranjan, (1918) 22 C.W.N.441.	245,
Eshaque v. Motilal, (1924) 81 I.C. 1043.	94,
Faez v. Ramsukh, (1893) I.L.R.21 Cal.169.	325,
Fakir v. W.C.Bonnerji, (1900) 4 C.W.N. 324.	379,
Fazal v. Sumor, (1913) 19 C.L.J. 333.	427,
Ferasat v. Priamboda, (1920) 69 I.C. 414.	497,498,
Fitzpatric v. Wallace, (1869) 11 W.R. 231.	158,
Forbes v. Maharaj Bahadur,(1914) I.L.R.41 Cal. 926 P.C.	556,558,559, 560,561,563,
Foyj v. Aftabuddin, (1902) 6 C.W.N.575.	635,636,
Fuller's Theatre v. Rofe, (1923) A.C.435.	616,
Gagan v. Casperz, (1897) 4 C.W.N. 44.	550,
Gakul v. Padmanund, (1902) 6 C.W.N. 825 P.C.	83,
Ganga v. Chairman, (1919) 50 I.C. 8.	153,
Ganes v. Lachmi, (1915) 34 I.C. 783.	486,487,489,
Ganpat v. Jasodhar, (1895) 17 C.L.J. 590.	343,
Gazee v. Chundee, (1867) 7 W.R. 250.	208,
Gholam v. Khairan, (1904) I.L.R. 31 Cal. 786.	609,
Gilmore v. Sreemunt, (1864) W.R.Gape vol.(Act X) 77.	137,
Girish v. Mahammad, A.I.R. 1933 Cal.66.	504,
Gobind v. Banarsi, (1913) 18 C.L.J. 74.	504,
Gobind v. Dino, (1871) 15 W.R. 87.	164,
Gobind v. Kamijuddi, (1905) 9 C.W.N.ccxlvi.	609,624,625,
Gobinda v. Chand, (1912) 17 C.W.N. 602.	544,
Gobinda v. Jitendra, A.I.R. 1938 Cal. 459.	499,

Page

Gocool v. Debendra, (1911) 14 C.L.J. 136 543,
Godai v. Aminuddi, (1913) 18 C.L.J. 509. 440,453,
Goher v. Alifuddin, (1919) 30 C.L.J.13 = 51 I.C.356. 152,
Golam v. Abdul, (1893) 13 C.L.J. 255. 152,
Golam v. Golap, (1882) 10 C.L.R. 499. 245,
Golam v. Gopal, (1868) 9 W.R. 65. 360,
Golam v. Hanumandas, (1934) I.L.R.61 Cal. 937. 253,255,
Golam v. Hurish, (1872) 17 W.R. 552. 171,
Golam Rahman Mistri v. Gurudas,(1922) 76 I.C.586. 93,94,95,
Goluck v. Nubo, (1874) 21 W.R. (C.R.) 344. 186,
Golum Husain v. K.S.Bonerjee,(1925) 30C.W.N.520. 333,
Gooroo v. Issur, (1874) 22 W.R. 246. 347,
Gopal v. C.K.Nag, A.I.R. 1936 Cal.375. 391,
Gopal v. Harendra, (1921) 63 I.C.483. 245,
Gopal v. Kumar, (1866) 6 W.R. (Act X) 85. 350,
Gopal v. Tapal, (1918) I.L.R.46 Cal.43. 122,
Gopal v. Tarinee, (1868) 9 W.R. 89. 236,
Gopanund v. Lalla, (1869) 12 W.R. 109. 364,440,
Gopeekishen v. Dowlut, (1864) 1 W.R.156. 193,
Gopendra v. Ramkishore,(1933) 37 C.W.N. 901. 562,563,564,
Goreeb v. Bhoobun, (1865) 2 W.R. (Act X) 85. 142,143,
Gosta v. Hem, (1924) I.L.R.51 Cal.1022. = 29 C.W.N. 124. 371,518,
Gour v. Beharee, (1869) 12 W.R. 278. 166,
Gour v. Bhola, (1894) I.L.R. 21 Cal. 233. 164,
Gour v. Bonomalee, (1874) 22 W.R. 117. 371,
Gouri v. Reily, (1892) I.L.R. 20 Cal.579. 361,514,519,
Grant v. Eklal, (1922) 67 I.C. 49. 498,
Guana v. Gunamani, (1927) 105 I.C. 52. 402,
Gudadhur v. Khettur, (1867) 7 W.R. 460. 208,
Gudar v. Brij, (1901) 5 C.W.N. 880. 488,
Gulmati v. Jago, A.I.R. 1929 Cal. 658. 496,
Gunesh v. Gondour, (1882) I.L.R. 9 Cal. 147. 619,
Gur v. Keshwar, (1916) 1 P.L.J. 76. 498,
Gurbhu v. Khudaijatunnissa, (1925) I.L.R.4.Pat.774. 203,
Gur Buksh v. Jeolal, (1888) I.L.R. 16 Cal. 127. 142,
Hanuman v. Gobinda, (1895) 1 C.W.N. 318. 578,
Hanuman v. Kauleswar, (1876) I.L.R. 1All. 301 F.B. 99,
Hanuman v. Ramjug, (1874) N.W.P. (H.C.R.) 371. 99,
Hara v. Jogendra, (1904) 9 C.W.N. 387. 640,
Haran v. Mookta, (1868) 10 W.R. 113. 225,
Haranath v. Kamini, (1906) 3 C.L.J. 25n. 635,
Herendra v. Khemada, (1925) 44 C.L.J. 282. 255,
Hari v. Atul, (1913) 19 C.W.N. 1127. 183,
Hari v. Dinu, (1911) 14 C.L.J. 170. 153,390,

Page

Hari v. Gour, (1929) I.L.R. 56 Cal. 1164. 82,83,
Hari v. Ram, (1892) I.L.R. 19 Cal. 541. 609,
Hari v. Surendra, (1907) I.L.R. 34 Cal. 718 P.C. 189,
Harihar v. Ajab, (1913) I.L.R. 45 Cal. 930. 468,
Harimohon v. Atul Krishna,(1913) 19 C.W.N.1127. 93,
Hari Nath v. Kulesh, A.I.R. 1933, Cal. 793. 456,
Harmanoge v. Ganour, (1916) 37 I.C. 360. 111,
Harro Kumari v. Purna Chandra,(1900) I.L.R. 28 Cal. 188. 441,
Haru v. Surendra, (1935) 40 C.W.N. 182. 154,
Hassan v. Nakchhedi, (1905) I.L.R. 33 Cal. 200. 504,
Hedayet v. Kamalanand,(1912) 17 C.L.J. 411. 147,159,
Heeramonee v. Gunganarain,(1868) 10 W.R.384. 236,
Hem v. Ashgar, (1894) I.L.R. 4 Cal. 894. 314,
Hem v. Chand, (1885) I.L.R. 12 Cal. 115. 313,
Hem v. Purna, (1916) I.L.R. 44 Cal. 567. 391,
Hemangini v. Asutosh, A.I.R. 1929 Cal.330. 183,
Hemanta v. Jagadindra, (1894) I.L.R. 22 Cal. 214. 387,
Hemchunder v. Monmohini, (1894) 3 C.W.N. 604. 557,
Herbert v. Chattur, (1907) 13 C.W.N. 664. 168,
H.H.Cannan v. Kylash, (1876) 25 W.R. 117. 122,124,
Hills v. Hurolal, (1865) 3 W.R.(Act X) 135. 336,
Hills v. Ishore Ghose, (1862) Marshall's Reports 151 =W.R.Spl.vol.p.48. 53,309, 338,
Hiralal v. Imanuddi, (1932) 36 C.W.N. 478. 255,
Hochen v. Poresh,(1919) 54 I.C. 647. 183,
Hoymobutty v. Sree Kishen, (1870) 14 W.R.58. 453,
Hridoynath v. Krishna, (1907) I.L.R.34 Cal. 298. 555,
Hukum v. Jugal, A.I.R. 1932 Pat. 203. 489,
Hurish v. Alexander, (1863) Marshall's Reports,479. 61,
Hurish v. Gunga, (1876) 25 W.R. 181. 167,
Hurish v. Mohinee, (1868) 9 W.R. 582. 431,
Huro v. Chundee, (1883) I.L.R. 9 Cal. 505. 475,
Huro v. Gobind, (1869) 12 W.R. 304. 245,
Hurrish v. Sreekalee, (1874) 22 W.R. 274. 226,
Hurro v. Chintamonee, (1865) 2 W.R. (Act X) 19. 207,
Hurro v. Gopee, (1882) 10 C.L.R. 559. 350,
Hurry v. Nursingh, (1893) I.L.R. 21 Cal. 129. 66,113,151,
Ichhyamoyi v. Kailash, (1913) 18 C.W.N. 358. 111,113,
Imam Bandi v. Kamleswari,(1886) I.L.R.14 Cal. 109 P.C. 245,
Indra v. Sarbasova, A.I.R. 1925 Cal. 743. 531,
In re Brohmomoyee, (1870) 14 W.R. 252. 146,
Isab v. Gurucharan, A.I.R. 1929 Cal. 431. 538,
Isapali v. Satis, (1921) 65 I.C. 504. 152,

	Page
Ishan v. Shama, (1883) I.L.R. 10 Cal. 41.	142,627,628,
Ishen v. Hurish, (1872) 17 W.R. (C.R.) 19.	142,
Jagadish v. Surendra, (1935) 40 C.W.N.166.	446,450,452,
Jaganmohan v. Brojendra,(1925) I.L.R. 53 Cal. 197 F.B.	318,322,
Jagarnath v. Janki, (1921) 26 C.W.N. 833 P.C.	179,180,
Jagat v. Nabagopal, (1907) I.L.R. 34 Cal. 305.	380,
Jagatjiban v. Sarat, (1902) 7 C.W.N. 728.	580,
Jaigobind v. Bhawani, (1929) I.L.R. 9 Pat.401.	158,
Jaladhar v. Amrita, (1927) 105 I.C. 641.	231,
James v. Ram, (1867) 8 W.R. 221.	235,
Janab v. Rokibuddin, (1905) 9 C.W.N. 571.	145,
Janaki v. Enat, (1922) 37 C.L.J. 489.	492,
Janki v. Dwarka, A.I.R. 1933 Pat. 219.	405,
Jardine v. Rani, (1878) 3 C.L.R. 140.	137,
Jasim v. Beni, (1913) 17 C.W.N. 881.	137,138,
Jatee v. Mungloo, (1867) 8 W.R. 60.	201,
Jatindra Mohun v. Jaroa Kumari, (1905) 10 C.W.N. 201 P.C.	104,
Jawadul v. Ram, (1896) I.L.R. 24 Cal. 143.	130,131,
Jeaullya v. Sukheannessa, (1910) 14 C.W.N. 446.	452,453,
Jeeatoollah v. Jugodindra, (1874) 22 W.R. 12.	414,
Jeonath v. Bishambhar, (1921) 106 I.C. 422.	482,
Jerman v. Ram, (1933) 58 C.L.J. 133.	611,
Jharu v. Mahatabuddin, A.I.R. 1928 Cal. 713.	640,
Jiban v. Muralidhar, (1924) 97 I.C. 513.	334,
Jitendra v. Manmohan, (1930) 34 C.W.N. 821.	553,
Jitendra v. Tejarat, (1928) 32 C.W.N. 1240.	505,506,
Jitendra v. Raicharan, (1928) 33 C.W.N. 356.	81,82,
Jnanendra v. Harendra, (1922) 87 I.C. 32.	84,85,107,
Jnanendra v. Jogendra, (1925) 91 I.C. 191.	629,
Jogendra v. Mahesh, (1928) 32 C.W.N. 559.	453,
Jogendra v. Nagendra, (1907) 11 C.W.N. 1026.	317,
Jogendra v. Paban, (1904) 8 C.W.N. 472.	524,
Jogesh v. Emdad, (1931) 36 C.W.N.221 P.C.	370,454,
Jogesh v. Sharfaddin, (1927) 32 C.W.N. 81.	428,
Jogeshari v. Mahomed Ibrahim, (1886) I.L.R. 14 Cal. 33.	615,
Johoory v. Buller, (1879) I.L.R. 5 Cal. 102.	386,
Jotiram v. Janaki, (1914) 20 C.W.N. 258.	649,652,
Jotoo v. Basmutee, (1871) 15 W.R. 379.	99,
Joy v. Bayee, (1867) 7 W.R. 40.	167,
Joy v. Doorga, (1869) 11 W.R. 348.	207,
Joy Gobind v. Monmotha, (1906) I.L.R. 33 Cal. 580.	317,

Page

Joy Kooer v. Furlong, (1864) W.R.Gape vol. (Act X) 112. 393,
Jugdeo v. Padarath, (1897) I.L.R. 25 Cal. 285. 578,579,580,
Juggo v. Promotho, (1879) I.L.R. 4 Cal.767. 157,
Juggodish v. Turrikoollah,(1875) 24 W.R. 90. 414,
Juggut v. Panioty, (1866) 6 W.R. (Act X) 48. 350,
Jugut v. Eshan, (1875) 24 W.R.220. 187,
Jumeer v. Goneye, (1869) 12 W.R. 110. 225,256,
Kadambenee v. Nobeen,(1865) 2 W.R. (C.R.) 157. 187,
Kailash v. Darbaria,(1915) 20 C.W.N.347. 536,537,
Kalar v. Mathura, (1913) 25 I.C. 547. 428,
Kalee v. Ameerooddeen, (1868) 9 W.R. 579. 225,
Kalee v. Jankee, (1867) 8 W.R. 250. 146,152,
Kalee v. Kalee, (1869) 11 W.R. 183. 152,
Kalee v. Ram, (1868) 9 W.R. 344. 64,225,
Kalee v. Shah, (1869) 12 W.R. 418. 133,
Kalee v. Shahonee, (1875) 25 W.R. (C.R.) 42. 143,
Kali v. Bhagwan, (1912) 17 C.W.N. 348. 143,144,
Kali v. Dhananjai, (1885) I.L.R.11 Cal. 625. 364,
Kali v. Fuzle Ali, (1883) I.L.R. 9 Cal.843. 615,
Kali v. Kali, (1916) 23 C.W.N.569. 593,605,
Kalihur v. Umae, (1896) I.L.R. 24 Cal. 241. 524,
Kalru v. Janki, (1916) 1 P.L.J. 273. 283,
Kamal v. Madhusudan, (1929) I.L.R. 57 Cal.344. 196,
Kamalanand v. Jarao, (1912) 17 C.L.J. 96. 453,
Kamala Ranjan v. Abdul Gafur, (1941) 45 C.W.N.464. 191,192,
Kamaleswari v. Harbullabh, (1905) 2 C.L.J. 369. 608,
Kameshwar v. Soney, A.I.R. 1933 Pat. 529. 469,
Kamini v. Khodada, (1905) 9 C.W.N. cclxxxvii. 649,
Kandhdeo v. Dewa, (1916) 36 I.C. 955. 386,
Kanti v. Suchitra, (1939) 43 C.W.N. 855. 536,
Karim v. Sundar, (1896) I.L.R. 24 Cal. 207. 280,283,
Karoo v. Luchmeeput, (1867) 7 W.R. (C.R.) 15. 64,207,225,
Karunamoyi v. Surendra, (1898) I.L.R. 26 Cal. 176. 562,
Kasem v. Tarakeswar, A.I.R. 1925 Cal. 1065. 298,
Kashee v. Onreat, (1866) 5 W.R. (Act X) 81. 236,
Kashikant v. Rohinikant, (1880) I.L.R. 6 Cal.325. 383,
Kasi v. Satyendra, (1910) 15 C.W.N. 191. 318,
Kassee v. Mynuddeen, (1864) 1 W.R. 154. 386,
Katie Graham v. Colonial Government, (1910) 12 C.L.J. 351. 394,
Kattyani v. Soonduree, (1865) 2 W.R. (Act X) 60. 333,
Katyani v. Udoy, (1922) I.L.R. 49 Cal. 257. 433,
Katyani v. Udoy, (1924) I.L.R. 52 Cal. 417 P.C. = 30 C.W.N. 1 P.C. 365,433,434, 443,444,445,447,

Page

Kayastha v. Sita Ram, A.I.R. 1929 All. 625 F.B. 284,
Kazee v. Nobo, (1866) 5 W.R. (Act X) 53. 336,
K.C.Dey v. Hira Bewa, A.I.R. 1937 Cal. 51. 428,430,
Kedar v. Khettur, (1880) I.L.R. 6 Cal. 34. 612,619,
Kedar v. Maharaja, (1909) 11 C.L.J. 106. 496,
Kenaram v. Ramcomar, (1865) 2 W.R. (Act X) 17. 336,
Kenny v. Issur, (1864) W.R.Gape vol. (Act X) 9. 235,
Keshab v. Jnanendro, (1914) 20 C.L.J. 332. 611,612,
Kesho v. Jagdeo, A.I.R. 1933 Pat. 261. 648,
Kesho v. Jirdhan, (1916) 2 Pat L.J. 48. 164,
Kesho v. Parmeshri, (1923) 71 I.C. 902. 110,
Kesho Prasad v. Ram, A.I.R. 1932 Pat. 363. 650,
Khagendra v. Sasi, A.I.R. 1928 Cal. 406. 364,
Khalilur v. Rupan, (1908) 12 C.W.N. 436. 170,
Khater v. Sadruddi, (1907) I.L.R. 34 Cal. 922. 635,
Khetrapal v. Kritarthamoyi, (1906) I.L.R.33 Cal. 557,559,
566 F.B. 561,
Khonkar v. Ali, (1900) 5 C.W.N. 351. 245,
Khoshal v. Jaynooddeen, (1869) 12 W.R.451. 225,
Khujoorunnissa v. Ahmed,(1869) 11 W.R.88. 65,225,
Kinu v. Kiranbala, (1933) 37 C.W.N. 586 =
= A.I.R. 1933 Cal. 653. 509,645,
Kiron v. Hamid, A.I.R. 1930 Cal. 300. 600,
Kishen v. Rajah (unreported appeal No. S.A.152 of 1877) 127,129,
quoted in Lal v. Solano (1883) I.L.R. 10 Cal.
45.
Kishori v. Ananta, (1905) 10 C.W.N. 270. 318,
Korim v. Aswini, (1921) 25 C.W.N. 658. 601,
Kripa v. Annanda, (1907) I.L.R. 35 Cal. 34 F.B. 380,381,386,
Kripa v. Doyal, (1874) 22 W.R. 169. 207,
Kripa v. Sheikh, (1906) 10 C.W.N. 944. 153.
Kripamoyi v. Durga, (1887) I.L.R. 15 Cal. 89. 207,
Krishna v. Jadu, (1915) 21 C.L.J. 475. 153,
Krishna v. Kalitara, (1917) 22 C.W.N. 289. 318,
Krishna v. Mohendra, (1921) 25 C.W.N. 930. 611,624,
Krishna v. Palakdhari, (1915) 20 C.W.N. 1157. 514,515,
Krishna v. Surendra, (1931) 36 C.W.N. 72. 456,
Krishna v. Wafiz, (1915) 21 C.W.N. 93. 145,
Krishnapada v. Manada Sundari, (1932) 36 C.W.N. 518 S.B. 553,
556,561,
Kristadhan v. Golam, (1916) 37 I.C. 862. 501,
Kristo v. Brojo, (1897) I.L.R. 24 Cal. 895. 495,
Kristo v. Chunder, (1871) 15 W.R. 230. 453,
Kshirod v. Rajendra, (1917) 38 I.C. 94. 92,106,
Kuldip v. Chatur, (1898) 2 C.W.N. cccii. 118,

	Page
Kuman v. Kachali, A.I.R. 1928 Pat. 62.	509,
Kumar v. Eastern Mortgage Agency, (1913) 18 C.L.J.83.	427,430,
Kumar Prafulla v. Nosibannessa, (1916) 24 C.L.J. 331 S.B.	558,560,
Laidley v. Gour, (1885) I.L.R. 11 Cal.501.	125,
Lakhan v. Jainath, (1907) I.L.R. 34 Cal.516 F.B.	281,283, 660,
Lakhi v. Hamid, (1917) 27 C.L.J. 284.	113,
Lakhi v. Nabadwip, (1926) 31 C.W.N. 192.	196,
Lakshmi v. Nabadwip, (1928) I.L.R. 56 Cal. 201.	537,
Lakshmi v. Tara, (1904) I.L.R. 31 Cal. 944.	199,
Lal v. Arbullah, (1896) 1 C.W.N. 198.	250,252,
Lal v. Deo, (1878) I.L.R. 3 Cal.781.	187,
Lal v. Mahabir, A.I.R. 1936 Pat.414.	514,
Lal v. Solano, (1883) I.L.R. 10 Cal. 45.	127,128,
Lalit v. Hitnarain, (1910) 15 C.W.N. lvi.	469,
Lalita v. Surnomoyee, (1900) 5 C.W.N. 353.	436,452,
Lani v. Muhammad, (1915) 20 C.W.N.948.	231,232,
Latifar v. Forbes, (1909) 14 C.W.N. 372.	158,
Lodai Mollah v. Kally Das, (1881) I.L.R.8 Cal.238.	521,529, 530,531,
Mabatullah v. Nalini, (1905) 10 C.W.N. 42.	524,
Madan v. Kali, (1937) 42 C.W.N. 126.	494,
Madan v. Sheikh Habi, (1898) 2 C.W.N. clxxxii.	642,
Madan v. Tarini, (1919) 54 I.C. 625.	228,
Mahamad Yacab Hossain v. Chowdhry Wahed Ali, (1885) 4 W.R. (Act X) 23.	96, 97, 99,
Mahamaya v. Kishore, (1913) 18 C.L.J. 502.	506,
Mahammad v. Sheikh, (1914) 21 C.L.J. 185.	243,259,
Mahananda v. Mongala, (1904) 8 C.W.N. 804 = I.L.R. 31 Cal. 937.	157,158,
Mahanth v. Janki, A.I.R. (1922) P.C. 142 = I.L.R. 1 Pat. 340.	107,170,
Maharaj Bahadur v. Forbes, (1908) I.L.R. 35 Cal.737.	558,
Maharaj Bahadur v. Nari Mollani, (1936) 40 C.W.N.683.	554,
Maharaj Narendra Narayan Bhup (July 1863)	64,
Maharaja v. Deb Kumari, (1871) 7 B.L.R.App.26.	386,
Maharaja Bahadur v. Makhan, A.I.R. 1919 Cal.590.	605,
Maharaja Kesho v. Triloke, (1924) I.L.R. 4 Pat.304.	383,
Mahendra v. Koilash, (1900) 4 C.W.N. 605.	562,
Mahendra v. Rajani, A.I.R. 1939 Cal. 609.	276,
Mahesh v. Bisho, (1875) 24 W.R. 402.	152,
Mahesh v. Saroda, (1893) I.L.R. 21 Cal.433.	184,

Page

Mahim v. Sheikh Karam Ali, (1928) 33 C.W.N. 501. 447,
Mahima v. Hazari, (1889) I.L.R. 17 Cal.45. 143,
Mahomed v. Ahmed, (1874) 22 W.R. 448. 629,
Mahomed v. Choa Lal, (1910) 13 C.L.J. 499. 228,
Mahomed v. Shunker, (1869) 11 W.R. 53. 235,
Mahomed Fayez v. Jamoo, (1882) I.L.R.8 Cal.730. 415,
Mahomed Faez v. Shib,(1871) 16 W.R.103. 596,
Mahommad v. Khana, A.I.R. 1928 Cal.606. 504,
Mahsenuddin v. Bhagaban, (1920) I.L.R.48 Cal.605 F.B. 244,
Mahtab v. Chittro, (1871) 16 W.R. 201. 364,371,
Makhan v. Khagendra, (1935) 40 C.W.N. 689. 504,
Manager Murshidabad Estate v. Hira,(1936) 41 C.W.N.88. 200,427,
Manasha v. Jalkadar, (1942) 46 C.W.N. 887. 425,
Manindra v. Ashutosh, (1917) 21 C.W.N.1132. 559,561,
Manindra v. Upendra, (1908) I.L.R. 36 Cal.604. 495,
Manindra v. Narendra, (1919) 23 C.W.N. 585. 432,
Manmatha v. Probodh, (1922) 73 I.C.416. 91,100,105,
Manmoth v. Anath, (1918) 23 C.W.N. 201. 83,212,335,
Mansar v. Abdul, (1909) 10 C.L.J.187. 616,
Maseyk v. Bhagabati, (1890) I.L.R. 18 Cal. 121. 141,
Masudan v. Goodar, (1905) 1 C.L.J. 456 169,
= 9 C.W.N. cvii
Matha v. Gopi, (1925) 89 I.C. 951. 504,
Mathews v. Smallwood, (1910) 1 ch.777. 616,
Mathura v. Mati, (1898) I.L.R. 25 Cal.781. 505,
Mathura v. Tota, (1912) I.L.R. 40 Cal.806 427,428,
= 16 C.L.J. 296. 430,
Matookdhari v. Jugdip, (1914) 19 C.W.N. 1319. 253,
Maugni v. Seo Charan, (1897) 1 C.W.N.clxxix. 469,
Meyoa v. Gobinda, (1917) 41 I.C. 679. 194.
Meyrick v. Dipa, (1923) 75 I.C.22. 496,
Miajan v. Minnat, (1896) I.L.R. 24 Cal.521. 130,
Midnapore Zemindary v. Hrishikesh, (1914) I.L.R. 84,85, 86,
41 Cal. 1108 F.B. 87,89,118,
179,283,284,
Midnapore Zemindary v. Jagat, A.I.R. 1925 Cal.139. 186,
Midnapore Zemindary v. Kristo, (1918) 46 I.C.544. 360,
Midnapore Zemindary v. Naresh,(1920)I.L.R.48 Cal. 460 P.C. 80,112,
Midnapore Zemindary v. Sadhumani,A.I.R. 1927 Cal.846. 594,
Midnapore Zemindary v. Secretary of State, (1938) 43 C.W.N. 57. 138,140,
Midnapore Zemindary v. Shamlal, (1910) 15 C.W.N.218. 77

Page

Midnapore Zemindary v. Shib,(1927) 105 I.C.741. 373,
Mirtunjoy v. Gopal,(1868) 10 W.R. 466. 208,
Mirza Nadir v. Muddurram, (1865) 2 W.R.(Act X) 2. 627,
Miterjeet v. Toondun,(1869) 12 W.R. (C.R.) 14 98,
= 3 B.L.R. App.88.
Mitturjeet v. Fitzpatrick,(1869) 11 W.R. 206. 127,128,
Mohamed v. Ali Fakir, (1909) 10 C.L.J. 25. 194,
Mohammad Ysuuf v. Ramdhan,A.I.R. 1935 Pat. 524. 391,
Mohesh v. Manbharan, (1901) 5 C.L.J. 522. 66,
Mohim v. Kalitara, (1906) 11 C.W.N. 939. 391,
Mohinee v. Ram Coomar, (1864) W.R.Gape vol. 576,
(Act X) 77.
Mohini v. Preonath, A.I.R. 1922 Cal. 141. 335,
Mohun v. Meer Shamsul, (1873) 21 W.R.5. 535,
Mohur v. Ram, (1874) 21 W.R. 400. 152,
Mokoondy v. Crowdy, (1872) 17 W.R.274. 138,
Monindro v. Muneer, (1873) 20 W.R.230. 187,226,
Monmohan v. Equitable Coal Co.,(1913)18 C.W.N. 596. 184,
Monohar v. Ananta, (1913) 17 C.W.N. 802. 250,252,
Monohar v. Paresh, (1913) 18 C.L.J. 175. 389,
Mookta v. Koylash, (1867) 7 W.R.493. 133,394,
Moula v. Judoonath, (1874) 21 W.R. 267. 336,
Mozhurnddin v. Gobind, (1880) I.L.R.6 Cal.436. 627,629,
Muddun v. William, (1872) 17 W.R. 441. 146,152,
Mukta v. Nirmal, A.I.R. 1934 Pat.5. 515,
Muktakeshi v. Pulin, (1908) 13 C.W.N. 12. 203,
Mukund v. Arfan, (1897) 2 C.W.N. 47. 538,
Mulluk v. Satish, (1909) 14 C.W.N.335. 555,
Muneeruddeen v. Mahomed, (1866) 6 W.R. 67. 245,246,
Musyatullah v. Noorzahan, (1883) I.L.R.9 Cal.808. 174,314,
Mutty v. Gundur, (1873) 20 W.R. 129. 245,
Nafar v. Rahaman, (1916) 23 C.L.J. 580. 493,495,503,
Nafar v. Ram, (1894) I.L.R. 22 Cal. 742. 194,
Nagenbala v. Sridam, A.I.R. 1933 Cal. 69. 498,504,
Nagendra v. Bhuban, (1901) 6 C.W.N. 91. 562,
Nalini v. Ali, (1924) I.L.R. 51 Cal.643. 427,
Narain v. Abinash, (1922) 27 C.W.N.299 P.C. 380,
Narain v. Munsur, (1876) 25 W.R. 155. 171,
Narain v. Opnit, (1882) I.L.R. 9 Cal. 304. 174,313,
Narain v. Srimanta, (1901) I.L.R. 29 Cal.219. 524,
Narendra v. Gorachand, (1906) I.L.R.33 Cal.683. 388,
Narendra v. Manindra, (1922) 26 C.W.N.826. 432,
Nath v. Damri, (1900) I.L.R. 28 Cal. 90. 496,

	Page
Nathuni v. Ramsaran, A.I.R. 1932 Pat.225.	516,
Nazir v. Jatindra, (1915) 30 I.C. 320.	502,503,
Neale v. Mackenzie, (1836) 1 M & W. 747.	438,
Neamatulla v. Bajiulla, (1914) 26 I.C.619.	640,
Nehaloonissa v. Dhunoo, (1870) 13 W.R.281.	226,
Nidhi v. Ram, (1873) 20 W.R.341.	157,
Nilkanta v. Ghantoo, (1900) 4 C.W.N.667.	242,
Nilmadhab v. Anantaram, (1898) 2 C.W.N.755.	635,
Nilmadhab v. Ishan, (1898) I.L.R.25 Cal.787.	522,
Nilmony v. Mathura, (1900) 4 C.W.N. clix.	182,
Nilmony v. Sonatun, (1887) I.L.R.15 Cal. 17.	174,314,
Nirod v. Pulin, (1925) 33 C.W.N.312.	505,506,
Nirod v. Raj Lakshmi, (1928) 33 C.W.N.309.	505,
Nobin v. Kula, (1910) 14 C.W.N. 914.	470,473,482,
Nobokanth v. Rajah, (1864) 1 W.R.100.	386,
Nogendra v. Pyari, (1915) 21 C.L.J.605.	284,
Noorijan v. Bimola, (1912) 18 C.W.N.552.	365,453,
Noyna v. Rupikun, (1882) I.L.R. 9 Cal. 609.	612,
Nripendra v. Jagendra, A.I.R. 1933 Cal.890.	604,
Nubo v. Kishen, (1864) W.R.Gape vol. (Act X) 112.	208,
Nuddear v. Modhoo, (1867) 7 W.R. 153.	245,
Nuddyar v. Meajan, (1884) I.L.R. 10 Cal. 820.	348,
Nuffer v. Nund, (1888) I.L.R.22 Cal. 751.	193,
Nundo v. Kali, (1898) 3 C.W.N. xlvii.	649,
Nunkoo v. Mohabeer, (1869) 11 W.R. 405.	206,
Nurendra v. Ishan, (1874) 22 W.R. F.B.	110,206, 207,246,
Nyamutoollah v. Gobind, (1866) 6 W.R. (Act X) 40.	187,
Obhoya v. Kailash, (1887) I.L.R. 14 Cal. 751.	252,
Official Trustee v. Purna, (1930) 34 C.W.N. 702.	554,
Oodit v. Hudson, (1865)2 W.R.(Act X) 15.	394,
Ooma v. Rajluckhee, (1875) 25 W.R.19.	267,
Pagose v. Rajoo, (1874) 22 W.R. 511.	152,
Palakdhari v. Manners, (1895) I.L.R.23 Cal.179.	212,
Pankajini v. Satish, (1935) 40 C.W.N. 86.	150,
Pearee v. Brojo, (1874) 22 W.R.428.	375,
Peary v. Badal, (1900) I.L.R. 28 Cal.205.	229,
Peary v. Kumaris, (1892) I.L.R. 19 Cal. 790.	240,
Peary v. Modhoji, (1912) 17 C.L.J.372.	394,
Peary v. Radhika, (1903) 8 C.W.N. 315.	241,
Pelaram v. Nund Coomar, (1866) 6 W.R.(Act X) 45.	463,
Pershad v. Ram, (1894) I.L.R.22 Cal.77.	600,605, 607,608,
Peter Nicholl v. Tarinee, (1875) 23 W.R.298.	612,613,
Phani v. Purna, (1943) 48 C.W.N. 210.	326,
Poolin v. Watson, (1868) 9 W.R. 190.	488,

Page

Poran v. Indra, (1919) I.L.R. 47 Cal. 129. 245,
Port Canning v. Asiruddy, A.I.R. 1929 Cal.334. 509,
Prabat v. Chirag, (1906) I.L.R.33 Cal. 607. 495,
Prabhati v. Tarak, (1941) 46 C.W.N.786. 608,624, 625,626,
Pradyote v. Gopi, (1910) I.L.R. 37 Cal.322. 194,195,
Pramatha v. Chandra, (1918) 46 I.C.539. 451,
Pran v. Kanta, (1924) 39 C.L.J.437. 335,
Pran v. Mukta, (1913) 18 C.L.J. 193. 257,259,
Pranesh v. Banawarilal, (1924) 86 I.C.533. 474,
Prasad v. Ambica,(1929) I.L.R.9 Pat.515. 203,
Pravat v. Bengal Central Bank, (1938) 42 C.W.N.761. 126,
Premanund v. Shoorendranath, (1873) 20 W.R. 329. 160,
Priag v. Brockman, (1870) 13 W.R.346. 464,
Priyanath v. Anath, (1916) 37 I.C.942. 252,
Prohlad v. Kedar, (1897) I.L.R.25 Cal.302. 347,
Prosunno v. Jagun, (1881) 10 C.L.R.25. 188,612,
Protap v. Biraj, A.I.R. 1914 Cal. 51. 639,
Pudmanund v. Baijnath,(1888) I.L.R.15 Cal.828. 426,429,
Pulin v. Abu Bakhar, (1936) 40 C.W.N. 599. 154,155,156,
Pundit v. Ram, (1871) 17 W.R. 62 F.B. 171,
Purna v. Rasik, (1910) 13 C.L.J.119. 441,
Pyari v. Gopal, (1898) I.L.R. 25 Cal.531 F.B. 268,269,
Pyari v. Hem, (1912) 16 C.W.N.730. 639,
Radha v. Balkowar, (1890) I.L.R.17 Cal.726 F.B. 408,409, 425,426,
Radha v. Bhowani, (1901) 6 C.W.N. 60. 537,
Radha v. Golak, (1904) I.L.R.31 Cal.834. 427,429,430,
Radha v. Hari, A.I.R. 1930 Pat.332. 469,
Radha v. Kalee, (1872) 18 W.R.41. 246,
Radha v. Rakhal, (1885) I.L.R. 12 Cal.82. 127,128,129,
Radhanath v. Krishna, (1935) 40 C.W.N. 722. 150,
Radhika v. Samir, (1917) 21 C.W.N.636. 186,
Radhika v. Urjoon, (1873) 20 W.R.128. 386,
Raghubar v. Jadunandan, (1911) 16 C.W.N.736. 546,
Raghubar v. H.Manners, (1911) 13 C.L.J.568. 140,
Raghunandan v. Lalit, A.I.R. 1934 Pat.542. 366,
Raghunath v. William Cox,(1914) 19 C.W.N.268. 243,
Rahim v. Nundo, (1887) I.L.R.14 Cal.321. 546,
Rahimannessa v. Mahadeb,(1910) 12 C.L.J.428. 531,
Rahimuddi v. Amina, (1925) 43 C.L.J.132. 156,
Rahimuddi v. Chadem, (1928) 32 C.W.N. 1060. 561,
Rahimuddi v. Jogendra, (1931) 54 C.L.J. 596. 562,563,
Rai Komul v. J.W.Laidley, (1879) I.L.R.4 Cal.957. 123,137,
Raja v. Zahir, (1871) 6 B.L.R.App.119. 386,
Rajabala v. Srish, (1914) 25 I.C.552. 340,

	Page
Raja Ban Behari v. Khetterpal, (1911) 16 C.W.N. 259.	538,552,
Raja Kristo v. Abdul, (1920) 34 C.L.J.35.	362,363,
Rajani v. Hara Sundari, (1917) 22 C.W.N.693.	271,275,
Rajani v. Ramnath, (1914) 19 C.W.N.458.	564,565,
Rajani v. Satish,(1918) 48 I.C.699.	440,
Rajani v. Secretary of State, (1918) I.L.R. 46 Cal. 90 P.C.	81,
Rajani v. Yusuf, (1916)21 C.W.N. 188.	77,78,650,
Raja Promoda v. Asiruddin,(1911) 15 C.W.N.896.	76,77,
Rajendra v. Chunder, (1901) 6 C.W.N.318.	356,
Rajendra v. Manindra, (1916) 24 C.L.J. 162.	364,
Raj Kishore v. Hareehur, (1868) 10 W.R. 117.	336,
Raj Kishore v. Rajani, (1907) 37 I.C.249.	188,189,
Raj Kumar v. Faizuddi, (1914) 30 I.C.283.	498,499,
Raj Kumar v. Naya Chatoo, (1904) I.L.R.31 Cal.960.	93,
Raj Kumar v. Ramani, A.I.R. 1927 Cal. 878.	183,
Raj Kumar v. Shib, (1932) 36 C.W.N. 788.	156,
Raj Kumar v. Surendra, (1921) 27 C.W.N.166.	366,373,
Rajmohun v. Gooroo, (1866) 6 W.R. (Act X) 106.	347,
Rajnarain v. Gour, (1866) 6 W.R. 215.	629,
Rakhal v. Bai Kuntha, (1928) 32 C.W.N. 1082.	380,381,
Ram v. Bhela, (1910) I.L.R.37 Cal.709.	285,
Ram v. Gora, (1875) 24 W.R.344.	245,
Ram v. Jawahir, (1907) 12 C.W.N.899.	252,254,
Ram v. Joyanti, (1926) 44 C.L.J.449.	365,
Ram v. Kachu,(1905) I.L.R.32 Cal.386 F.B.	130,131,
Ram v. Krishno, (1874) 23 W.R. 106.	208,
Ram v. Lachmi, (1870) 14 W.R. (C.R.) 388.	97,
Ram v. Lukhee, (1864) 1 W.R. (C.R.)71.	64,225,
Ram v. Madhoo, (1869) 11 W.R. 304.	341,
Ram v. Maheshwar, (1915) 29 I.C.880.	468,469,
Ram v. Mohamed, (1898) 3 C.W.N. 62.	127,
Ram v. Mohan, (1931) 35 C.W.N.1143.	79,82,
Ram v. Poolin, (1878) 2 C.L.R.5.	373,
Ram v. Ram, (1867) 7 W.R. 132.	595,
Ram v. Ranigange Coal Association, (1898) I.L.R. 26 Cal. 29 P.C.	233,
Ram v. Rao Jogendra, (1872) 18 W.R. 328.	379,
Ram v. Sahrai, (1919) 52 I.C. 20.	498,
Ram v. Udai, (1918) 49 I.C. 515.	183,
Ram v. Veryag, (1876) 25 W.R. 554.	137,
Ramadhin v. Kumodini, (1918) 45 I.C. 901.	505,
Ramani v. Hara Chandra, A.I.R. 1923 Cal. 162.	440,
Ram Charan v. Lucas, (1871) 16 W.R. 279.	373,
Ramdayal v. Midnapore Zemindary, (1910) 15 C.W.N. 263.	95,

Page

Ramdev v. Newaj, (1909) 10 C.L.J. 196. 534,
Ramdhun v. Haradun, (1869) 12 W.R. 404. 121,146,152,
Ramdoyal v. Upendra, (1912) 17 C.W.N. 501. 641,
Ramesh v. Daiba, (1924) 28 C.W.N. 602. 216,217,250,
Rameswar v. Mehdi, (1889) I.L.R. 26 Cal.39 P.C. 391,
Rameshwar v. Badril, A.I.R. 1930 Pat. 105. 514,518,
Ramgati v. Pran Hari, (1905) 3 C.L.J. 201. 635,
Ramji v. Ram, (1923) 75 I.C. 411. 469,
Ram Kumar v. Rameshwar, (1917) 38 I.C. 523. 242,
Ram Kumar v. Ram Newaj, (1904) 8 C.W.N. 860. 113,
Ramlal v. Dhirendra, (1942) 47 C.W.N. 489 P.C. 434,435,
436,444,
Ramnath v. Gondee, (1868) 10 W.R. 441. 394,
Ramnidhee v. Parbutty, (1880) I.L.R. 5 Cal.823. 350,
Ram Prasad v. Ram Charan, (1914) 27 I.C. 601. 556,
Ramrup v. Manners, (1905) 4 C.L.J. 209. 139,
Ranee v. Blumhardt, (1868) 9 W.R. 552. 152,
Ranee Shoorut v. Charles Binnay,(1876) 25 W.R.347. 226,
Ranee Shurut v. Chllector of Mymensingh, (1866)
5 W.R. (Act X) 69. 379,383,
Rani v. Ashutosh, (1910) 14 C.W.N. clii. 364,
Rani Chattra Kumari v. W.W.Broncke, (1927)
32 C.W.N. 260 P.C. 422,425,429,
Raniganj Coal Association v. Judoonath,(1892)
I.L.R. 19 Cal. 489. 78,157,
Rasheswari v. Saurendra, (1909) 11 C.L.J. 601. 440,
Rash Dhary v. Khakon, (1897) I.L.R. 24 Cal.433. 535,
Rash Mohini v. Debendra, (1911) 16 C.W.N. 395. 555,
Rashmoni v. Dhirendra, (1928) 33 C.W.N. 311. 505,
Rashum v. Bissonath, (1866) 6 W.R. (Act X) 57. 347,
Reaz v. Bijoy, A.I.R. 1935 Pat.453. 498,
Reed v. Sree Kishen, (1871) 15 W.R. 430. 127,128,167,
Roghoobun v. Bishen, (1865) 2 W.R. (Act X) 92. 133,
Rowshan v. Shyama, (1913) 20 C.L.J.331. 503,
Rudreshwari v. Dhana, (1919) 52 I.C. 119. 428,
Rukmini v. Prohlad, (1943) 47 C.W.N. 702. 154,
Rung v. Lalla, (1872) 17 W.R. 386. 364,
Rungo v. Abdool, (1878) I.L.R. 4 Cal. 314. 175,535,
Ruttykant v. Gungadhur, (1862) W.R.Sp.No.13 F.B. 386,
Sadhan v. Aghore, (1933) 37 C.W.N. 818. 150,
Sahar Munshi v. Jnanada, (1920) 57 I.C. 998. 502,
Sailaja v. Gyani, (1912) 18 C.L.J. 29. 550,
Sajiwan v. Gulab, (1916) 35 I.C. 678. 482,
Sajjad v. Trailakhya, (1927) 32 C.W.N. 472. 447,449,
Sakhisona v. Prankrishna, A.I.R. 1933 Cal.566. 431,434,
445,450,

Page

Sali v. Ajijuddin, A.I.R. 1927 Cal. 911. 502,
Salimullah v. Kaliprosonno, (1913) 33 I.C. 349. 364,
Samira v. Gopal, (1864) 1 W.R. 58. 535,
Samsar v. Lochin, (1896) I.L.R. 23 Cal. 854. 193,196,
Samujan v. Munshi, (1900) 4 C.W.N. 493. 252,
Sarajubala v. Saradanath, (1918) 23 C.W.N. 336. 392,
Sarat v. Asiman, (1904) I.L.R. 31 Cal. 725 = 8 C.W.N. 601. 107,644,
Sarat v. Dharmadas, (1937) 42 C.W.N. 375. 555,
Sarat v. Prasanno, (1922) 71 I.C. 304. 250,
Sarat v. Shyam, (1912) I.L.R. 39 Cal. 663. 498,
Sarat v. Surendra, A.I.R. 1928 Cal. 428. 450,452,
Sarbeswar v. Bejoy chand, (1921) 26 C.W.N. 15. = I.L.R. 49 Cal. 280. 120,594,
Sarif v. Aftabuddin, (1910) 13 C.L.J.115. 442,
Saroda v. Hazee, (1866) 5 W.R. (Act X) 78. 236,240,
Saroda v. Manmatha, (1914) 19 C.W.N. 870. 431,
Saroj v. Surya, (1935) 40 C.W.N. 121. 348,
Sasi v. Genda, A.I.R. 1925 Cal. 389. 502,
Sasibhusan v. Umakant, (1914) 19 C.W.N. 1143. 401,
Sashi v. Denomoyee, (1916) 34 I.C. 301. 550,
Sati Prasad v. Monmotha, (1913) 18 C.W.N. 84. 379,402,
Satis v. Nil Madhub, (1922) 37 C.L.J. 598 = A.I.R. 1923 Cal. 665. 333,334,
Satish v. Kabiruddin, (1899) I.L.R. 26 Cal. 233. 498,
Satish v. Raja Reshee, (1932) 36 C.W.N. 1134. 455,
Satyabhama v. Krishna, (1880) I.L.R. 6 Cal.55. 627,628,
Secretary of State v. Digambar, (1917) I.L.R. 46 Cal. 160. 76, 79,
Secretary of State v. Forbes, (1912) 16 C.L.J.217. 232,233,
Secretary of State v. Gobind, (1916) 21 C.W.N.505. 80,93,113,
Secretary of State v. Jadav, (1916) 21 C.W.N.452. 67,
Secretary of State v. Ram, (1922) 70 I.C. 207. 335,
Secretary of State v. Sarat, (1924) 40 C.L.J.235. 335,
Seetanath v. Sham, (1872) 17 W.R. 418. 369,
Seraj gunge Jute Co. v. Torabdee, (1867) 25 W.R.252. 415,
Shadhoo v. Ramanoograha, (1868) 9 W.R. 83. 463,
Shaik v. Krishna, (1916) 24 C.L.J. 371. 317,318,
Shaikh Mahomed v. Bolakee, (1875) 24 W.R.330. 193,
Shakoti v. Maharaja, (1896) 1 C.W.N. 132. 546,
Sham v. Doorga, (1867) 7 W.R. 122. 347,
Sham v. The Court of Wards, (1875) 23 W.R. 432. 157,
Shama v. Taki, (1901) 5 C.W.N. 816. 431,

Page

Shama v. Uma, (1897) 2 C.W.N. 106. 606,
Sharoda v. Gonee, (1864) 10 W.R. (C.R.) 418. 186,
Sharoop v. Joggesur, (1899) I.L.R. 26 Cal.564 F.B. 619,620, 624,
Sheik Gozaffur v. Dablish, (1896) 1 C.W.N. 162. 654,
Sheikh v. Baikunta, (1910) 15 C.W.N. 680. 241,
Sheikh v. Sheikh, (1863) Marshall's Reports,341. 340,
Sheikh Abdool v. Dataram, (1864) W.R.Gape vol,367. 192,
Sheikh Enayetoollah v. Elaheebuksh,(1864) W.R.Gape vol. (Act X) 42. 362,363,
Sheikh Gholam v. Rajah Poorno, (1865) 3 W.R. (Act X) 147. 142,143,
Sheikh Miadhar v. Rajani, (1909) 14 C.W.N.339. 635,637,
Sheikh Nasarat v. Kalidas, (1919) 54 I.C.750. 110,
Sheikh Nizamuddin v. Momtajuddin, (1900) 5 C.W.N.263. 629,
Sheikh Peer v. Sheikh, (1864) W.R.Spl.vol.146 F.B. 142,
Sheo v. Ram,(1891),I.L.R. 18 Cal.333. 496,
Sheobarat v. Nawrangdeo,(1901)I.L.R.28 Cal.364. 576,
Sheonandan v. Ramhit, (1911) 15 C.L.J.647. 140,
Shib v. Bamun,(1871) 15 W.R.360. 187,612, 613,
Shib v. Bepin, (1922) 27 C.W.N. 144. 605,
Shib v. Panchanan, (1935) 64 C.L.J.71. 121,624,
Shib v. Vakai, (1906) I.L.R.33 Cal.601. 550,
Shital v. Prossonnamoyi,(1894) I.L.R.21 Cal.986. 464,468,
Shooshee v. Gobind, (1890) I.L.R. 18 Cal.231. 546,
Shorussoti v. Perbutti, (1880) 6 C.L.R.362. 350,
Shreesh v. Esom, (1933) I.L.R. 61 Cal. 75. 190,
Shumsher v. Doya, (1881) 8 C.L.R. 150. 627,628,
Shunkur v. Mirza, (1872) 18 W.R. 507. 206,207,
Shyam v. Bhanga, (1914) 23 I.C. 777. 403,
Shyama v. Debendra, (1900) I.L.R. 27 Cal. 484. 548,549,
Shyama v. Heras, (1898) I.L.R. 26 Cal. 160. 386,
Siba v. Bipradas, (1908) 12 C.W.N.767. 372,
Siboo v. Gopal, (1873) 19 W.R. 200. 157,
Singaran Coal Syndicate v. Indra,(1905) 10 C.W.N.173. 613,
Sirdhar v. Rameswar, (1887) I.L.R.15 Cal.166. 400,403,
Sitanath v. Pelaram, (1894) I.L.R.21 Cal.869. 130,
Soman v. Raghubir, (1896) I.L.R.24 Cal.160. 190,617, 624,
Sonaullah v. Bhagabati, (1918) 28 C.L.J.142. 501,
Soodha v. Ram, (1873) 20 W.R. 419. 336,
Soorasoonderee v. Golam Ali, (1873) 19 W.R. 141 P.C. 475,
Soshi v. Gagan, (1894) I.L.R. 22 Cal. 364. 564,

	Page
Sourendra v. Kanai, (1940) 45 C.W.N. 396.	434,435, 446,450,
Sreemati Mallikadasi v. Makham,(1905) 9 C.W.N. 928.	632,637, 638,640,
Sreemuttya v. Bhyrub, (1876) 25 W.R. 147.	614,
Sreeram v. Bissonath, (1865) 3 W.R. (Act X) 2.	206,
Srikant v. Saroda, (1898) I.L.R.26 Cal.46.	228,229,
Srimant v. Mahadeo, (1904) I.L.R. 31 Cal.550.	557,
Srinibash v. Ram, (1914) 18 C.W.N. 598.	370,
Sudhanya v. Gouranga, (1917) 41 I.C.542.	562,
Sukhi v. Gunga, (1864) W.R.Gape vol. (Act X) 126.	336,
Sukhraj v. Ganga, (1921) 6 Pat.L.J.665.	368,371,
Sulachana v. Kali, A.I.R. 1925 Cal.516.	231,
Sulaiman v. Uma, (1924) 79 I.C. 648.	650,
Suratan v. Lutu, (1942) I.L.R. 1 Cal.523.	329,
Surendra v. Baidyanath, (1932) 37 C.W.N.335.	162,
Surendra v. Baroda, (1904) 10 C.W.N. clxiv.	81,
Surendra v. Bhudar, A.I.R. 1938 Cal.690.	365,431,
Surendra v. Chandratara, (1930) 34 C.W.N. 1063.	158,
Surendra v. Dina Bandhu, (1908) 13 C.W.N.595.	232,
Surendra v. Dina Nath, (1915) I.L.R.43 Cal. 554.	365,
Surendra v. Hari, (1903) 9 C.W.N. 87 = I.L.R.31 Cal.174.	126,188,
Surendra v. Kali Kanta, (1910) 14 C.W.N. ccvii.	441,
Suresh v. Mathura, A.I.R. 1925 Cal. 1187.	444,
Suresh v. Nesa, (1910) 11 C.L.J. 433.	253,
Surja v. Baneswar, (1896) I.L.R. 24 Cal. 251.	391,
Susil v. Rajani, (1927) 31 C.W.N. 990.	444,445, 446,
Syam v. Sati Nath, (1916) 24 C.L.J. 523.	615,617,
Syed v. Gobinda, (1904) 9 C.W.N. 140.	151,
Syed Ameer v. Sheo, (1873) 19 W.R.338.	143,
Syed v. Omrit, (1864) W.R.Gape vol. (Act X) 42.	367,
Syed Nowab v. Hemata, (1903) 8 C.W.N.117.	80,
Syedunnessa v. Amiruddi, (1917) I.L.R.45 Cal.294.	559,561,
Swarnamoyee v. Aferaddi, A.I.R. 1932 Cal.787.	616,
Tafazzal v. Masalat, (1934) 38 C.W.N. 797.	105,
Taher v. Tarafdi, (1915) 20 C.W.N. 661.	624,625,
Tamizuddin v. Ashrub Ali, (1904) 8 C.W.N.446 F.B.	643,
Taraf v. Kunja, A.I.R. 1926 Cal.1226.	447,452,
Taramali v. Safatulla, (1914) 22 I.C. 854.	495,
Taran v. Ganendra, (1911) 16 C.W.N.235.	347,348,

	Page
Tarani v. Srish, (1928) 32 C.W.N. 587.	120,
Tarini v. Debnarayan, (1871) 8 B.L.R.(App.)69.	187,
Tarini v. Kedar, (1928)33 C.W.N. 126 F.B.	549,
Tejendra v. Bakai, (1895) I.L.R. 22 Cal.658.	505,
Telam v. Adu, (1913) 17 C.W.N. 468.	228,
Tepu v. Tefayet, (1915) 19 C.W.N.772.	145,
Thakooranee v. Bisheshur, (1865) B.L.R.Sup.vol. 202 F.B.	12,13,15,16, 27,45,48,53,54,84,85,86, 87,89,96,107, 109,172,288,289, 310,338,479,
Thakur Prasad v. Syed Mahamad Baker, (1867) 8 W.R. (C.R.) 170.	97,98,
Thomas v. Obhoy, (1865) 2 W.R. (Act X) 27.	370,
Thomas Savi v. Punchanun, (1876) 25 W.R.503.	137,138,
Tiluck v. Mahabeer, (1871) 15 W.R. 454.	236,
Tiluckdari v. Chultan, (1889) I.L.R.17 Cal.131 P.C.	417,426,
Tinkari v. Nagendra, (1923) 27 C.W.N. 716.	531,533, 534,
Tirthanund v. Mutty, (1878) I.L.R.3 Cal.774.	207,267,
Trailokya v. Ambica, (1937) 41 C.W.N.1148.	203,
Tribeni v. Sheo Singh, A.I.R. 1952 Pat.325.	451,
Tripp v. Kalee, (1864) W.R.Gape vol.(Act X) 122.	369,
Uday v. Hari, (1909) 13 C.W.N.937.	282,
Uma v. Moni, (1902) 8 C.W.N. 192.	157,
Uma v. Uma, (1867) 8 W.R. 181.	64,
Umesh v. Gour, (1906) 10 C.W.N. 1042.	552,
Umrao v. Mohamed Rojabi, (1899) I.L.R. 27 Cal.205.	66,78,
Umrao v. Syed, (1899) 4 C.W.N. 76.	151,
Unnopoorna v. Ooma, (1872) 18 W.R.55.	206,
Upendra v. Meheraj, (1916) 21 C.W.N. 108.	427,430,
Upendra v. Pratap, (1903) I.L.R.31 Cal.703.	143,144,
Upton v. Townend, (1855) 17 C.B. 30 (64).	453,
Urjoon v. Ramnath, (1873) 21 W.R. 123.	642,
Wahid v. Mahamed, (1918) 47 I.C. 147.	252,
Wajibunnissa v. Babulal, A.I.R.1926 Pat.42.	509,
Wajihunnissa v. Fakira, A.I.R. 1923 Pat.94.	645,
Watson & Co. v. Koer Jogendra, (1864) 1 W.R.76.	137,
W.M.Grant v. Harsahey, (1913) 19 C.W.N.117.	335,
Wooma v. Huree, (1868) 10 W.R. 101.	207,
Wooma v. Kishoree, (1867) 8 W.R.238.	142,
Wooma v. Koondun, (1873) 19 W.R.177.	137,
Woomakant v. Gopal, (1865) 2 W.R. (Act X) 19.	157,
Zulfun v. Radhica, (1878) I.L.R. 3 Cal. 560.	143,144.

Bibliography.

Articles, Notes and Newspapers

Articles

Anonymous.	"The Zemindar and the ryot" Published in the Calcutta Review, 1846, Vol.VI.
"	"A retrospect and a warning - 1885 to 1908" published in the Calcutta Review of April,1908, Vol.CXXV.
K.N.R. (a judicial officer)	"Khudkasht ryot of Bengal" published in the Calcutta Review, 1883, Vol.LXXVII,No.153.
Risley, H.H.	"The Bengal Tenancy Act" published in the Calcutta Review, 1886,Vol.LXXXIII.

Notes

Field, C.D.	Notes on Enhancement of rent.
"	Notes on Transferability of raiyats' holdings.
Mackenzie, A.	Notes on the rights and status of the cultivating classes dated 6th January, 1880.
Mukherjee, P.M.	Notes on Enhancement of rent dated 18th March, 1880.

Newspaper

The Times, London dated 19th April, 1965.

Books and Papers

Books

Baillee, N.B.E.	The Land Tax of India (London: Smith, Elder & Co.,1873, 2nd Ed.)

Bell, H.	Law of Landlord and Tenant (Calcutta: Fred Lewis, Central Press Co. 1870).
Bengal Government Publication	Bengal District Gazetteers, Nadia (Calcutta:Bengal Secretariat Book Depot,1910) Vol.XXIV.
"	Selections from Papers relating to Bengal Tenancy Act, 1885 for use of Government Officials (Calcutta; Bengal Secretariat Press, 1920).
Board of Revenue,Bengal.	Directions for Revenue Officers in the North Western Provinces of Bengal Presidency (Calcutta: Baptist Mission Press, 1850).
"	Law of Landlord and Tenant, edited by the Board of Revenue, Bengal, 1864, for the use of Revenue Officers.
Campbell, G.	Cobden Club Essay on Land Tenure of India (London; Macmillan & Co., 1870).
Civilian (Mr.Halhed)	A Memoir on the Land Tenure and Principles of Taxation (Calcutta: Samual Smith & Co.,1832).
Colebrooke, H.T.	Remarks on the Present State of the Husbandry & Commerce of Bengal (Calcutta, 1795).
Colebrooke, J.E.	Supplement to the Digest of the Regulations & Laws enacted by the Governor General in Council (Calcutta, 1807).
Field, C.D.	A Digest on the Law of Landlord and Tenant (Calcutta; Bengal Secretariat Press, 1879).

Field, C.D. (contd.)	Introduction to the Bengal Code (Calcutta: S.K.Lahiri & Co., 1912, 2nd Ed.).
"	Landholding and the relation of Landlord and Tenant in various Countries (Calcutta; Thacker Sprink & Co., 1885, 2nd Ed.).
Finucane, M and Ameer Ali	A Commentary of the Bengal Tenancy Act (Calcutta; The Cranenburgh Law Publishing Press, 1911, 2nd Ed.).
Foa, Edgar.	Outline of the Law of Landlord and Tenant, Six Lectures delivered at the request of the Council of Legal Education (London: Stevens & Haynes Law Publishers, Bell Yard, Temple Bar, 1913).
Harington, J.H.	An Elementary Analysis of the Laws and Regulations enacted by the Governor General in Council (Calcutta; Hon'ble Company's Press, 1814-15) Vol.II.
"	An Elementary Analysis of the Laws & Regulations enacted by the Governor General in Council (Calcutta; Gazette Press, 1817) Vol.III.
Hollingbery, R.H.	The Zemindary system of Bengal (Calcutta; Brown & Co., 1879) Vol.2.
Hunter, W.W.	A Statistical Account of Bengal (London: Trubner & Co., 1875) Vol.II.
"	Introduction to Bengal Ms. Records (London: W.H.Allen & Co.Ltd.,1894) Vol.I.

Malthus, T.R. — Principles of Political Economy (London: John Murray, 1820).

Mill, J.S. — Principles of Political Economy (London: Parker, Son & Bourn, West Strand, 1862, 5th Ed.). Vol.1.

Mitra, S.C. — The Land Laws of Bengal, Tagore Law Lectures, 1895 (Calcutta: Thacker Spink & Co., 1898).

Nelson, W.H. — Final report on the survey and settlement operations in the district of Rajshahi, 1912-22 (Calcutta: Bengal Secretariat Book Depot, 1922).

Phillips, A. — The Law relating to the Land Tenures of Lower Bengal, Tagore Law Lectures, 1874-75 (Calcutta: Thacker Spink & Co., 1876).

Rampini, R.F. — The Bengal Tenancy Act (Calcutta: S.K.Lahiri & Co.,1918,Sixth Ed.).

Robinson, R.H. — An Account of the Land Revenue of British India (London: W.Thacker & Co. 1856).

Rouse, C.W.B. — Dissertation on Landed Property of Bengal (London:John Stockdale, 1791).

Sen, S.C. — Bengal Tenancy Act (Calcutta:M.C. Sarkar & Sons, 1929, 7th Ed.).

Whinfield, E.H. — The Law of Landlord and Tenant (Calcutta: Wyman & Co., 1869).

Wilson, H.H. — Glossary (London: H.Allen & Co., 1885).

Woodfall. — Law of Landlord & Tenant (London: Sweet & Maxwell, 1902, 17th Ed.).

Papers

Campbell, A.D. — Paper on the Land Revenue of India, prepared at the request of the Select Committee of the House of Commons, 1832.

Grant, James — Analysis of the Finances of Bengal.

Circular, Notification and Resolution

Circular

Circular No. 29 dated 12th November 1833 from the Board of Revenue, Bengal to the Divisional Commissioners.

Circular No. I of October, 1902 from the Board of Revenue, Bengal to the Settlement Officers.

Notification

Notification No. 2832 of the Government of India dated 1st September, 1905.

Notification No. 291 of the Government of India dated 22nd March, 1912.

Notification No. 4794 R.L. of the Government of Bengal dated 12th March, 1929.

Resolution

The resolution of the Bengal Government dated 19th March, 1891.

Government Resolutions on the Final report on the Survey and Settlement operation in the district of Nadia, 1929.

Debates and Proceedings

Extract from the Proceedings of the Council of the Governor General in India dated:-

1st October, 1767

16th August, 1769

10th October, 1857

2nd March, 1883

13th March, 1883

27th February, 1885

4th March, 1885

5th March, 1885

6th March, 1885

9th March, 1885

11th March, 1885.

Extract from the Proceedings of the Bengal Legislative Council, 1928.

Extract from the Proceedings of the Bengal Legislative Assembly, 1937 and 1939.

Despatches and Letters

Despatch dated:-

19th September, 1792
12th December, 1792
15th January, 1819
21st March, 1882
17th October, 1882.

Letter of the Collector of Rajshahi to the Board of Revenue, Bengal dated 16th August, 1811.

Revenue Letter to Bengal dated 10th November, 1824.

Letter No. 24 R.L. dated 17th September, 1884 from the Commissioner of the Presidency Division, Bengal.

Evidence and Answers to Questions

Halt MacKenzie's evidence No. 2575 before the Select Committee of the House of Commons, 1832.

Gholam Hossain Khan's answers.

Royroyan's answers.

Minutes and Consultations

Minutes of :-

Warren Hastings dated 1st November and 12th November, 1776.

Sir John Shore dated 18th June, 1789.

Lord Cornwallis dated 18th September,1789.

Lord Cornwallis dated 3rd February, 1790.

Lord Moira dated 21st September, 1815.

Lord Hastings dated 31st December, 1819.

Lord William Bentinck dated 26th September,1832.

Sir Antony McDonell dated 20th September, 1893.

Consultation

Revenue Consultation No. 5 dated 8th March, 1827.

Objects and Reasons for and notes on clauses of Bills.

Statement of objects and reasons of the Bengal Tenancy Bill of 1883.

Statement of objects and reasons of the Bengal Tenancy (Amendment) Bills of 1897, 1925 and 1928.

Notes on clauses of the Western Bengal Tenancy (Amendment) Bill, 1906.

Notes on clauses of the Eastern Bengal and Assam Tenancy (Amendment) Bill, 1907.

Notes on clauses of the Bengal Tenancy (Amendment) Bill, 1928.

Reports

Reports of Messrs. Anderson, Crofts and Bogle dated 25th March,1778.

Report of the Finance Committee, Calcutta dated 12th July, 1830.

Bengal Administration Report:-

1872-73,
1882-87,
1892-93,
1911-12.

Report of the Rent Law Commission, 1880.

Report of the Bengal Government dated:

27th September,1883,
15th September, 1884.

Report of the Select Committee on the Bengal Tenancy Bill dated:

27th September, 1883,
14th March, 1884,
12th February, 1885.

Report of the Select Committee on the Western Bengal Tenancy (Amendment) Bill, 1906 dated 6th March, 1907.

Report of the Select Committee of the Eastern Bengal and Assam Tenancy (Amendment) Bill, 1907 dated 9th March, 1908.

Report of Sir John Keer Committee of December, 1922.

Report of the Select Committee on the Bengal Tenancy (Amendment) Bill, 1926.

Report of the Land Revenue Commission, Bengal dated 21st March, 1940, Vol.1.

Report of the Bengal Administrative Enquiry Committee, 1945.

Reports (contd.)

United Kingdom

Fifth Report from the Select Committee of the House of Commons, 1812 on the affairs of the East India Company and Glossary to the report.

Report from the Select Committee of the House of Commons, 1832 on the affairs of the East India Company.

List of Statutes

Central Acts

Year	No.	Short title	Page
1872	Act I	Evidence	276,536,f.n.34
"	Act 9	Contract	391
1877	Act 15	Limitation	580,617,618
"	Act I	Specific Relief	253,641
1882	Act 4	Transfer of Property	148,149
1908	Act 5	Civil Procedure	550,551,552,563
"	Act 9	Limitation	625,626,641,642

Bengal Regulations and Acts

1772	-	Revenue Regulation (14th May)	19,409,410
1787	-	Revenue Regulation (8th June)	411
1793	Reg.I	Permanent Settlement	23,49,266
"	Reg.2	Land Revenue	265,306
"	Reg.8	Decennial Settlement	23-27,29,89, 165,291,304, 413,417
"	Reg.17	Distraint	38,568
"	Reg.19	Non-Badshahi Grants	306
"	Reg.44	Patta	26
1794	Reg.4	Patta	36
1799	Reg.7	Recovery of rent	37-9,204
1812	Reg.5	Revenue Sales	39,40,41,413
"	Reg.18	Leases and Land Revenue	288
1817	Reg.12	Patwaris	30
1818	Reg.I	Kanangoe	30
1819	Reg.I	Kanangoes and Patwaris	30
"	Reg.2	Land Revenue Assessment	30
"	Reg.8	Patni	41,42,281
1822	Reg.11	Indemnity	44-46,87,204
1825	Reg.11	Alluvion and Diluvion	350
1841	Act 12	Revenue Sales	46
1845	Act I	Revenue Sales	47
1847	Act 9	Alluvion and Diluvion	350
1859	Act 10	Rent Act	51,52,53,90-92, 106,119,121, 166,170,171, 173,175,177, 179,200,289, 304,313,330, 331,345,370, 375,383,414, 457,475,483, 511,568-72,596.

Year	No.	Short title	Page
1859	Act 11	Revenue Sales	120,594,644
1862	Act 6	Rent Act	400
1869	Act 8	Bengal Act	51-54,90-92, 106,121,166, 170,171,173, 175,177,179, 304,313,330, 331,345,362, 370,375,383, 414,457,475, 483,511,568-72 596
1876	Act 7	Land Registration	522,575
1880	Act 9	Cess	522,523
1885	Act 8	Bengal Tenancy[1]	
		Sec.3	66,70,80,101, 312,313,425, 553,562
		Sec.4	90,91,106,178, 179
		Sec.5	66,67,69,75, 158,174
		Sec.11	183
		Sec.12	183
		Sec.13	184
		Sec.15	184,523
		Sec.16	185,524
		Sec.16A	185
		Sec.17	184,185
		Sec.18	91,121,182-84, 186,313,457, 591,630
		Sec.19	112,113,120, 150
		Sec.20	114,115,116, 172,173
		Sec.21	114,172,313
		Sec.22	127,130,132-35,137-40,176

1. The original Bengal Tenancy Act, 1885 was the Central Act but the subsequent Amendments were the Provincial Acts.

Year	No.	Short title	Page
1885	Act 8.	Bengal Tenancy	
		Sec.23	188,194
		Sec.24	304,313
		Sec.25	175,597,630
		Sec.26	176,202
		Sec.26B	220
		Sec.26C	222,317
		Sec.26D	221
		Sec.26E	221
		Sec.26F	221
		Sec.26G	223,296-98, 667
		Sec.26H	221
		Sec.26J	221
		Sec.27	304,338
		Sec.29	457,490,491 492
		Sec.30	339,457,461 474,475,483 484,487
		Sec.31	471-73,475
		Sec.31A	466
		Sec.32	480,481
		Sec.33	486
		Sec.34	487
		Sec.35	489
		Sec.36	489
		Sec.37	490
		Sec.38	339,511,512 514,516
		Sec.39	482
		Sec.42	313,343
		Sec.43	506,507
		Sec.44	314,630,644 -48,652
		Sec.46	344,507,508 652,653
		Sec.48G	122
		Sec.50	92,100,332, 337
		Sec.51	340
		Sec.52	345,348,351 356-58,360, 361,363,364 391
		Sec.53	375

Year	No.	Short title	Page
1885	Act 8	Bengal Tenancy	
		Sec.54	376-80,383,521
		Sec.55	391
		Sec.56	392
		Sec.57	392,393
		Sec.58	393
		Sec.61	399,400
		Sec.62	403
		Sec.64	404
		Sec.64A	379,380,405, 406
		Sec.65	175,314,555, 592,596,597
		Sec.66	647
		Sec.67	384,385,387
		Sec.68	386
		Sec.72	315
		Sec.73	212,316,317
		Sec.74	422,423,f.n.35.
		Sec.74A	424
		Sec.75	423
		Sec.75A	490,510,
		Sec.76	190,191,262,263
		Sec.77	186,190,260
		Sec.78	261
		Sec.79	286
		Sec.82	264,654
		Sec.83	655
		Sec.85	227
		Sec.86	176,186,237, 239,241,243
		Sec.86A	364,374,668
		Sec.87	177,186,246, 250,252,254-57, 643
		Sec.88	186,267,270, 274-76,278,279
		Sec.89	592,631,641, 646-48
		Sec.105	354,448
		Sec.106	100,354
		Sec.113	122
		Sec.115	335
		Sec.116	88,165,168,180, 610
		Sec.121	575
		Sec.122	576

Year	No.	Short title	Page
1885	Act 8	Bengal Tenancy	
		Sec. 125	576
		Sec. 126	576,577
		Sec. 127	577
		Sec. 133	577
		Sec. 134	577
		Sec. 137	578
		Sec. 138	578
		Sec. 139	578
		Sec. 140	578,579
		Sec. 144	539,555
		Sec. 146A	320,554
		Sec. 147	376,538,539
		Sec. 147A	110,503,538, 666
		Sec. 148	539-41,563
		Sec. 148A	526,527,529
		Sec. 149	541
		Sec. 150	541
		Sec. 151	541
		Sec. 153	547-49
		Sec. 153A	542
		Sec. 154	488
		Sec. 155	592,593,598, 599,626
		Sec. 156	264,656,658, 659
		Sec. 158A	581-84
		Sec. 158B	588
		Sec. 159	324
		Sec. 160	285,594,595, 644,653
		Sec. 164	542
		Sec. 165	542,543
		Sec. 166	543
		Sec. 167	543
		Sec. 168A	326,327,550, 551
		Sec. 169	325,327
		Sec. 170	544
		Sec. 171	545
		Sec. 173	545
		Sec. 174	545,547
		Sec. 174A	546,547

Year	No.	Short title	Page
1885	Act 8	Bengal Tenancy	
		Sec. 178	173,192,199, 212,221,233, 238,261,285, 292,295,296, 364,390,519, 591,598,631, 646,654
		Sec. 179	106,262
		Sec. 180	163,164,180
		Sec. 182	152,155
		Sec. 183	122,212,280, 284
		Sec. 186A	640-41
		Sec. 187	392,393
		Sec. 188	609,610
		Sec. 193	158
		Schedule III	254,593,642, 652
1899	Act I	General Clause	126
1913	Act 3	Public Demands Recovery	581,582
1951	Act 28	State Acquisition	674,675
1954	Act I	Estate Acquisition	674
1956	Act 10	Land Reforms	674,675

U.K.

1784	-	Pitt's India Act	62
1881	-	Conveyancing	607

Abbreviations

Law Reports

India

A.I.R.	=	All India Reporter
All.	=	Allahabad
B.L.R.	=	Bengal Law Report
Cal.	=	Calcutta
C.L.J.	=	Calcutta Law Journal
C.L.R.	=	Calcutta Law Report
C.W.N.	=	Calcutta Weekly Notes
F.B.	=	Full Bench
I.C.	=	Indian Cases
I.L.R.	=	Indian Law Report
N.W.P.(H.C.R.)	=	North West Province (High Court Ruling)
Pat.	=	Patna
P.C.	=	Privy Council
P.L.J.	=	Patna Law Journal
S.B.	=	Special Bench
W.R.	=	Sutherland's Weekly Report

U.K.

A.C.	=	Appeal Case
Ch.	=	Chancery
M & W	=	Meeson & Welsbey's Reports.

Abbreviations continued....

Miscellaneous

App.	=	Appendix
Art.	=	Article
cl.	=	clause
Co.	=	Company
Col.	=	Column
C.R.	=	Civil Ruling
Ed.	=	Edition
Exp.	=	Explanation
F.N.	=	Foot note
No.	=	Number
op.cit.	=	opere citato (in the work cited)
S.A.	=	Second appeal
Sch.	=	Schedule
Sec.	=	Section
Spl.	=	Special
Sup.	=	Supplementary
Vol.	=	Volume

Index

	Page
Abandonment	245
a question of fact	250,255
as contrasted with surrender	258-59
elements necessary to constitute	250
non-payment of rent not to constitute	251
notice if a condition precedent to re-entry	252
onus of proof of, on landlord	254-55
protection of under-raiyat and sub-lessees on	255-57
provision of Sec.87 not exhaustive	252-53
when a question of law	255
Abatement of rent (see reduction of rent):	
calculation of (s.52(4)	373-74
could be claimed -	
by way of set-off	371
in rent suit	371,518
could be sued for or pleaded in defence	370-71
for loss of land by deposit of sand	366
for not obtaining possession	366,432
in case of dispossession by title paramount	364
no separate suit necessary for	372
on account of diluvion	364
onus of proof of	370
right to, how long lasted	368-69
waiver of	363-64
Abolition of Zemindary system	674
Abwab	406
case law on	414-18
history of	406-14
imposition of, illegal (s.74)	422
in feudal Europe	418-19
payable at the time of Permanent Settlement but not consolidated with the asal jama, not recoverable	417
penalty for exaction of (s.75)	423
realization of, a criminal offence (s.75A)	424
what was and what was not abwab	425
" " " " " " a question of fact	429

	Page
Agriculture:	
meaning of	147
Alteration of rent:	
for alteration of area (See.52).	344
to be distinguished from enhancement . . .	345-46
Ameliorating waste.	602
Assignee:	
could not execute decree unless the landlord's interest was vested in him (Sec.148(0).	563
suit for arrears by bare assignee not a suit for rent.	562
Attachment:	
and sale of other property prohibited by s.168 A(1).	550
but not mere attachment without sale . . .	551
Auction purchaser:	
liability of, for rent	324-26
Back rent:	
assignment of.	562
Breach of condition:	
a ground for ejectment (ss.18,25(b),44(b).	591,597,645
limitation for suit for ejectment on . . .	593
relief against forfeiture on (sec.155(4) .	599-600
Burden of proof (see onus of proof)	
Certificate Procedure	580
what passed in certificate sale.	588-89
Cessation:	
of the landlord's interest affected the question of charge	556-61
Char land:	
acquisition of occupancy right in (s.180).	163-64
Charge:	
rent was a first charge.	556,592

	Page
Circumstances leading to the Bengal Tenancy Act, 1885.	55-59
Classification of raiyat.	84
Compensation:	
for breach of contract (s.155)	592,598
for misuse of land (s.155)	598
for not granting receipts.	393
for raiyats' improvements.	654
principle of estimation of (s.83).	655
Complete usufructuary mortgage:	
definition of.	223 f.n.21
occupancy raiyat could enter into.	223
Compromise:	
in contravention of two annas rule	503
Confirmation of sale:	
auction purchase to take effect from . . .	324
Consent:	
of landlord and tenant required for division of tenancy or distribution of rent (s.88)	267
of landlord required for transfer of occupancy holding before 1928.	206
Contract:	
barring acquisition of occupancy right (s.178)(1)(a).	173,292
barring occupancy right to trees (s.178(1)(h)	199,293
barring right to make improvement (s.178(1)(d)	261,293
barring right to reduction of rent (s.178(3)(e)	294,519
barring right to sub-let (s.178(3)(d). . .	233,285,294
barring right to surrender (s.178(3)(c). .	238,294
barring right of transfer of occupancy right (s.178(1)(g)	221,293
barring right of user of occupancy raiyat (s.178)(3)(b)	192,294

	Page
contravening two annas rule wholly void . .	495
enhancement of non-occupancy raiyats' rent by (s.43).	506
enhancement of occupancy raiyats' rent by (s.29)	490
what contracts not hit by sec.29 -	
settlement of bona fide disputes.	496
creation of new holding	498
withdrawal of remission	506
Co-sharer landlord:	
acquisition of occupancy right by (s.22(2).	133-37
alternative claim for excess realization against	533-34
could maintain an ejectment suit.	609-11
could sue for rent in respect of his share (s.148A).	526-29
must act jointly with other co-sharers (s.188)	273-74
question of title in suit by.	533
Co-sharer raiyat:	
entitled to pre-emption (s.26F)	221,224
liability to pay rent of.	317-24
Crops:	
rights of ejected raiyat to.	656
Custom:	
as to trees	193-98
court to have regard to, in determining whether a tenant was tenure-holder or raiyat.	75
saving of (s.183)	213 f.n.97
Dakhilas:	
for 20 consecutive years not necessary for presumption under s.50(2)	332-35
penalties for refusal to grant, (s.58). . .	393
Damages:	
for denial of landlord's title (s.186A) . .	640-41
interest not to be decreed when damages were awarded (s.68 proviso)	386

	Page
Decennial settlement	
declared permanent	22-23
Decree:	
appeal against rent-decree	547-50
application to set aside ex-parte decree .	541-42
no ejectment except in execution of (s.89)	592,646-48
suit to set aside sale under rent decree (s.174)	545-47
Decree-holder:	
could bid at sale.	545
Definition of:	
complete usufructuary mortgage (s.3(2) . .	223 f.n.21
holding (s.3(5).	131 f.n.25
improvement (s.76(1)	190,262
non-occupancy raiyat (s.4(c)	178
occupancy raiyat (s.4(b)	106
raiyat (s.5(2)	66,69
raiyat at fixed rates (ss.4(a) & 18) . . .	91-92
rent (s.3(13).	101,312,425, 553,562
settled raiyat (s.20).	114
Denial of landlord's title:	
no ground for ejectment of raiyat.	626-35
penalty for (s.186A)	640-41
Deposit:	
a mode of tender (s.54).	377-78
court to grant receipt on.	403
effect of.	405
in what cases, could be made	399
necessary on application to set side ex-parte decree (s.153A)	542
necessary to prevent sale (ss.170,171) . .	543-45
necessary to set aside sale (s.174(1). . .	545
of rent in court (s.61).	399
penalty for refusal to receive (s.64A)). .	405
receipt for, a valid acquittance	403
Dewany (1765)	17
Diara:	
meaning of	162 f.n.18
acquisition of occupancy right in (s.180).	163-64.

	Page
Diluvion:	
abatement of rent on account of	364
Dispossession:	
a ground for abatement of rent.	364
suspension of rent on account of, by landlord	440-54
Distraint:	
abolished in 1928	580
meaning of	565-66
origin of	566
proposal of Rent Law Commission on.	572
under Bengal Tenancy Act (ss.121-40). . . .	574-79
under Regulation 17 of 1793	568
under Rent Acts of 1859 and 1869.	568-72
Distribution of rent of holding (s.88)	267-79
Division of tenancy:	
application for (s.88(2).	277
not binding on landlord without his consent (earlier law)	267
Ejectment:	
compensation for improvement before	654
denial of landlord's title, no ground for .	626
for arrears of rent (ss.44(a),66)	646-47
grounds for -	
of raiyats at fixed rates (s.18(1)(b) . .	591
of occupancy raiyat (s.25).	595-98
of non-occupancy raiyat (s.44).	644
limitation in suits for	617
protection from, -	
of raiyat at fixed rates (s.160(ff) . . .	594-95
of occupancy raiyat (s.160(d)	643-44
remedies for illegal.	641
rights of ejected raiyat in crops (s.156) .	656
suit by co-sharer landlord for.	609
Emblements:	
no law of, in India . . ½	660
Encroachment:	
liability for additional rent for land gained by	351-52

	Page
Encumbrance (see incumbrance)	
Enhancement of rent (occupancy raiyat):	
by suit (s.30)	460-61
by contract (s.29)	490-95
contract of, must be registered	490
contract of, must be in writing	490
contract to pay, on future measurement	501
claim for hajat rent not one for	505-6
decree for, effected from what date	488
distinguished from alteration of rent	345-46
for new consideration	502
for raising status of tenant	498
by way of conversion of cash into produce rent	504
limitation to bring successive enhancement	490
observation of the Rent Law Commission on	458,476
power to order gradual or progressive enhancement	489
rule of proportion in enhancing rent on account of rise in price of staple food crops (s.32)	479-81
settlement of bona fide dispute not a contract of	496
Enhancement of rent (non-occupancy raiyat):	
condition of	506
not invalidated by subsequent acquisition of occupancy right	505
suspension of provisions of (s.75A)	490,509-10
Escheat:	
extinction of occupancy right upon (s.26)	176
Eviction:	
what constituted	452-54
Execution of rent decrees	542
Fair and equitable rent:	
existing rent presumed to be	338
meaning of	338
obligation of occupancy raiyat to pay	337

Page

Fine:
for realization of abwab (s.74A) 424
for withholding receipts and counter-foils (s.58) 393
for withholding statements of accounts (s.58) 393

First change:
cessation of landlord's interest if affected 556-61
rent was 556,592

Fixed rates:
ejectment of a raiyat at 591
meaning of 91-106

Fixity of rent:
presumption as to (s.50) 332

Fluvial action:
enhancement on account of increase in productive powers due to (s.30(d). 461,487
meaning of (s.30 Exp.) 461

Forfeiture:
acquiescence in or waiver of 612
by denial of landlord's title (earlier law). 626
court of equity leans against. 614
for breach of condition. 591,597,647
for misuse of land 597,645
relief against 593,599,600

Hajat:
claim for full rent in respect of land ceasing to be patit for which hajat was allowed, not affected by sec.29. . . . 505
claim for, not necessarily one for enhancement. 506
meaning of 505 f.n.24
when a colourable device for illegal enhancement. 506

Heirs:
liability of, to pay rent, unless they surrendered. 240,315

	Page
Heritability:	
of holding of raiyat at fixed rates (s.18).	182
of occupancy raiyat under earlier law . . .	202
of occupancy raiyat under the Act of 1885 (s.26)	202
of non-occupancy raiyat	280-84
Holding:	
abandonment of (s.87)	186,246,286
definition of (s.3(5)	131 f.n.25
division of or distribution of rent of (s.88)	186,267
includes undivided share forming separate tenancy	131 f.n.25
right to make improvements in (s.77). . . .	186,259,286
surrender of (s.86)	186,233,286
Homestead:	
applicability of the Bengal Tenancy Act, 1885 to (s.182)	152
earlier law as to occupancy right in. . . .	151
held otherwise than as a part of agricultural holding.	154
meaning of.	156
occupancy right in.	153
status of raiyat in	155
Horticulture:	
how far governed by the Act of 1885	150
meaning of.	148
Ijaradar:	
could not acquire occupancy right (s.22(3).	137
could not acquire non-occupancy right . . .	140
occupancy raiyat did not lose status by subsequently taking ijara (s.22(3)Exp.) .	139-40
person jointly interested as - could acquire occupancy right	141
Illegal cesses (see abwab)	
Improvements:	
by landlords was a ground for enhancement beyond the limit of s.29.	491
Collector to decide question as to right to make (s.78).	261
compensation for, how estimated (s.83). . .	655

	Page
compensation for raiyats' (s.82(1).	264,654
definition of (s.76(1).	190,262
fee realised for permission to make improvement an abwab (s.77(3)..	261-62
priority between landlord and tenant regarding (s.77(2)	260
right to make improvement not to be taken away by contract (s.178(1)(d)	261,293
what should be presumed to be (s.76(2). . . .	262
Incidents:	
of holding at fixed rates	182-86
of occupancy right.	186-287
of tenancy of non-occupancy raiyat.	279-87
Increase of area:	
by accretion.	346
by encroachment -	
on khas land of the Crown	358
on khas land of the landlord.	346
on the tenanted land of the landlord. . .	346
on the land of third person	346
by measurement.	351-52
Increase of rent:	
computation of.	479-80
not to be allowed unless there had been increase in actual area	355-56
must be fair and equitable (s.52(3)	360
Incumbrance:	
not ipso facto cancelled by sale.	543
power of purchaser to avoid	543
procedure for annulling (s.167)	543
registered and notified	542
s.167 prescribed the only mode of	543
Indigo:	
erection of factory for, if misuse of land.	188-89
Induction:	
of tenant by landlord without title	67,143
Injunction:	
no injunction to restrain permissive waste.	603
to restrain misuse of land.	604

	Page
Injury:	
to be stated when decree was sought to be set aside (s.174(3) proviso (a)	547
Instalment:	
of rent when fell due.	376
rent payable in four equal instalments (s.53)	375
Interest:	
"amount claimed" in s.153 included interest	549
could not be decreed if damages awarded (s.68 proviso)	386
contract for interest in contravention of s.67 invalid (s.178(1)(i)	390
due only at the end of the quarter (s.67).	383-87
no waiver of interest by non enforcement of right	386
on arrears of rent, rate of (s.67)	383-87
Issues:	
in a rent suit	529
Jalkar:	
no right of occupancy in	157
Jote:	
meaning of	63 f.n.15
Judgment debtor:	
could not bid at sale (s.173(2).	545
entitled to the balance of surplus sale proceeds (s.169)	325
Kabuliat:	
meaning of	23 f.n.34
Kaimi	87 f.n.88
Khamar:	
meaning of	88 f.n.96
tenant of, could not acquire right of occupancy (s.116).	168

	Page
Khoodkasht raiyat:	
change in 1859.	89
meaning of.	27 f.n.45
Land:	
definition of	146
use of -	
by raiyat at fixed rate	185
by occupancy raiyat	186
Landlord:	
assignee of	562
could not cut trees in raiyat's possession	196
cessation of interest of.	556-61
dispossession by.	431,440
effect of acquisition of occupancy right by (s.22(1)	127
eviction by	440
improvements by (s.29 proviso (ii). . . .	491
induction of tenant by, without title . .	67,143
liability for rent on change of	315
notice of transfer to (s.26(c)(1)	222
position of landlord and raiyat -	
in Hindu period	12-13
in Muslim period.	13-17
in British period from 1765 to 1859 . .	17-50
under Rent Acts of 1859 and 1869. . . .	50-53
right of -	
to charge for arrears of rent (s.65). .	555-56
to eject non-occupancy raiyat for arrears of rent (s.44(a)	645
to enhance rent of non-occupancy raiyat (s.43).	506
to enhance rent of occupancy raiyat (ss.29,30)	461,490
to get additional rent for additional area (s.52(1).	351-52
to get interest on arrears of rent or damages in lieu thereof (ss.67 and 68).	383,386
to get notice of transfer of occupancy holding (s.26C(1)(i)	222
to prepare and retain copy of the statement of account (s.57(3). . . .	393
to prepare and retain counterfoils of receipt (s.56(2)	392
to take possession of holding -	
on abandonment (s.87(1).	246-47
on surrender (s.86(5).	238
reversion of occupancy right to	203

	Page
Landlord's fee in case of transfer of occupancy holding.	221
abolished in 1938.	221
Landlord's title: damages for denial of (s.186A)	640
Liability: for rent	313
for rent of co-sharer raiyat after sub-division of holding (s.88(5)	279
for rent of heirs of occupancy raiyat. . . .	240,315
for rent of purchaser at a rent sale	324
for rent on change of landlord	315
Limitation: to annul incumbrances (s.167(1).	543
to deposit rent for setting aside rent sale (s.174(1)	545
to eject for breach of contract (Sch.III, Art.I)	593
to eject for misuse of land (Sch.I,Art.32) .	617
to eject non-occupancy raiyat under sec. 44(c) upon expiration of lease (Sch.III, Art.1(a)	652
to recover possession by raiyat under Sec.9 of the Specific Relief Act,1877 (Sch.I,Art.3).	642
to recover possession under sec.87(3) - by raiyat at fixed rates and occupancy raiyat	247,254,643
by non-occupancy raiyat.	247,254,643
to set aside sale on material irregularity (s.174(3).	547
Merger: no merger when a raiyat became temporary tenure-holder (s.22 Exp)	139
no merger when co-sharer landlord acquired interest in occupancy holding other than at a rent sale (s.22(2)	135,177
principle of	176
when sole landlord acquired raiyat's interest (s.22(1).	130,176

	Page
Money decree:	
distinction between rent decree and money decree.	552
what passed in a.	552
Money order:	
a mode of payment or tender of rent (s.54(2) and (3).	377-78
legal effect of acceptance of rent by (s.54(4) and s.64A,proviso)	378,379,405-6
penalty for refusal to receive rent tendered by (s.64A)	405
Mortgage:	
by occupancy raiyat.	223
occupancy raiyat to enter into complete usufructuary mortgage (s.26G(1) .	223,296-98
Non-occupancy raiyat:	
definition of (s.4(c)	178
ejectment of (s.44)	644-53
enhancement of rent of (s.43)	506
grounds of ejectment of (s.44).	645
heritability of holding of.	280-84
holding of, if a protected interest (s.160(e)	653
incidents of holding of	177-81,279-87
initial rent of (s.42).	343
no ejectment of, except on specified grounds	645
rights of -	
to abandon (s.87)	245,286
to claim reduction of rent.	519-20
to improvement.	286-87
to sub-let (s.85)	227,285
to surrender (s.86)	233,286
transferability of the interest of. . . .	284
Notice:	
before re-entry on abandonment (s.87(2) .	247,252
contents of, under sec.155.	604
of surrender (s.86(2)	237,239
of transfer of holding at fixed rates (s.12, s.18).	183
of transfer of occupancy holding (s.26C(1)	222

	Page
to annul incumbrance (s.167(1).	543
to eject on the ground of breach of condition (s.155)	592,598,648
to eject on the ground of misuse of land (s.155).	598,648
Occupancy holding:	
mortgage of (s.26G)	223
sale of, with power to avoid incumbrances .	542
transfer of, to be made by registered instrument.	222
transferability of (s.26B).	220
Occupancy raiyat:	
could be ejected only on specified grounds (s.25).	597
could not be ejected for arrears of rent (s.65)	596-97
could not surrender after transferring non-occupancy holding	244
definition of (s.4(b)	106
distinction between occupancy raiyat and settled raiyat.	118
incidents of.	186-279
liability for rent of heirs of.	240,315
limitation on mortgage by (s.26G)	223,296
obligation of, to pay rent (s.24)	337
power of, to enter into complete usufructuary mortgage (s.26G(1).	223,296
rights of -	
to abandon holding (s.87)	246
to compensation (s.82(1).	654
to improvement (s.77)	259
to inherit (s.26)	202
to pay fair and equitable rent (s.24) . .	337
to pre-empt (s.26F)	221
to sub-let (s.85)	227
to surrender (s.86)	237
to transfer (s.26B)	220
to trees (s.23A).	192
to use land (s.23).	186
Occupancy right:	
acquisition of -	
by co-sharer landlord (s.22(2).	132-37
by firm	122-27
by non-occupancy raiyat	180
by raiyat at fixed rates (s.18(1)(c). . .	119-21

	Page
by under-raiyat (s.48G(1)	121-22
in accreted land	164
in char or diara land (s.180(1)	163
in homestead land (s.182)	152
in horticultural or orchard land temporarily let out for cultivation of agricultural crop	295-96
in pasture land	158
in proprietor's private land (s.116)	165-70
in utbandi land (s180(1)	160-63
in waste land (s.178 proviso)	295-96
contracts barring acquisition of(s.178(1)(a)	173,292
devolution of	200
did not accrue to middleman	112
extinction of, upon escheat to Crown	176
extinguishment of occupancy right	175
how occupancy right could be acquired	170
incidents of	186-287
land in which occupancy right could be acquired	146
nature of	106-11
no occupancy right by sole landlord (s.22(1)	127-32
by ijaradar	137
in bazar	156
in coal depots	157
in ghat	156
in government lands	165
in indigo factory	156
in jalkar	157
in manufactories	156
in mines	157
in taluks	157
in quarries	157
not merely a person right or a personal privilege	110
protected interest (s.160(d)	644
settled raiyats to have	144
transferability of	203-24
under trespasser	144
who could acquire	112
Onus of proof:	
in rent suit	534
in suits for abatement of rent	370,454
landlord to prove abandonment	254-55
landlord to prove additional area for additional rent (s.52(1)	355-56

	Page
landlord to prove his private land.	168
to prove uniform payment of rent for twenty years, payment of rent for all those years not to be proved.	332-33
Original purpose:	
whether a tenancy was a tenure or a raiyati was to be determined with reference to, (s.5(4)(b).	75
Parabi	414 f.n.15
Paramount title.	364
Pargana rate	27,49,54, 304,310,338
Pasture land:	
right of occupancy could be acquired in . .	158
Patni taluk:	
effect of the sale of	42
nature of	41
origin of	41
Patta:	
failure of the provision of	27
provisions for delivery of.	25-27
Payment of rent:	
by transferee from occupancy raiyat (s.73).	317
instalment for (s.53)	375
into court (s.61)	399
into court of money admitted to be due to third person (s.149(1).	541
tenant entitled to receipt on (s.56(1). . .	392
time and place for (s.54)	376-78
to transferee of landlord (s.72).	315
when due (s.53)	375
where there was no village office	378
Penalty:	
for exaction by landlord of sum in excess of the rent payable (s.75).	423
for realisation of abwab (s.74A).	424
for refusing to receive rent tendered by postal money order or deposited in court (s.64A)	405
for withholding receipts and accounts (s.58)	393

	Page
Permanent Settlement:	
concluded in.	22-23
errors of	32-36
presumption of holding at the same rent since (s.50(2).	332
Permissive waste:	
no injunction to restrain	603
Person:	
includes any company or association . . .	126
Place:	
for payment of rent (s.54).	376
Plaint:	
in rent suit what to contain in	539
Postal money order:	
payment of rent by (s.54(2)	377
presumption arising when rent was sent by (s.54(3)	378
Pre-emption:	
principle underlying.	221
right of co-sharer raiyat to pre-empt . .	221
Prescription:	
claim for suspension or apportionment of rent not lost by.	455
Presumption:	
as to fair and equitable rent (s.27). . .	338
as to fixity of rent (s.50)	332
as to fixity of rent not to apply where origin of tenancy or record of rights were prepared (s.115)	335
as to notice of surrender (s.86(3). . . .	239
Prevailing rate:	
a question of fact.	469
Commissioners' report as to existence of .	473
did not mean average rate	464

Page

enhancement on the ground of (s.30(a) 461
meaning of -
under Rent Acts of 1859 and 1869. 463
under the Bengal Tenancy Act, 1885. 465-66
no enhancement where no prevailing rate . . . 469
not to be determined when rent settled in contravention of s.29. 470
rules as to enhancement on the ground of (s.31). 471
rent below the prevailing rate, a ground of enhancement of rent (s.30) 461

Price list:
of staple food crops (s.39) 482

Prices:
cause of increase of. 478-79
enhancement on the ground of rise in (s.30(b). 461,475

Produce rent:
By paying fixed proportion of, whether could be raiyats at fixed rates. 96-105

Productive powers of land:
a ground for enhancement of rent (s.30(c) . . 461,483-84
rules as to enhancement of rent on the ground of increase in (s.34). 487

Progressive enhancement:
power to order (s.36) 489

Proprietor's private land:
acquisition of non-occupancy right in (s.116) 168-69
acquisition of occupancy right in (s.116) . . 168-69

Protected interest:
meaning of. 594
what interests were -
interest of raiyat at fixed rates (s.160(ff). 594-95
interest of occupancy raiyat (s.160(d). . . 644
interest of non-occupancy raiyat (s.160(e). 653

	Page
Punyaha day:	
meaning of	391 f.n.58
payment on	391
Purchaser:	
liability of, for arrears of rent (ss.73,168A)	316-17,324-30.
power of, to annul incumbrance	542-43
Question of fact:	
prevailing rate of rent.	469
what was or was not abwab.	429
whether the defendants represented the entire body of co-sharer tenants	329
Quinquennial settlement	19
Railway Company:	
no occupancy right acquired in lands of a.	165
Raiyat:	
abandonment by (s.87).	245
classes of (s.4)	84-91
could acquire a right under a trespasser .	67,144
definition of, (s.5(2)	66
definition of, not exhaustive.	66
distinction between tenure-holder and raiyat (s.5)	68
distinction between tenure-holder and raiyat not exhaustive.	83
included successors-in-interest (s.5(2). .	66
meaning of	60-66
obligation of, to pay rent (ss.18,24,42) .	313
rights of.	182-287
settled raiyat (s.20).	114
sub-letting by	224
surrender by (s.86).	233
Raiyat at fixed rates:	
acquisition of occupancy right by (s18(1)(c)	119-21
all incidents of a permanent tenure not applicable to.	182
definition of (s.4(a).	91-92

	Page
ejectment of (s.18(1)(b).	591
mode of creation of	105-06
not to be ejected for arrears of rent (s.65).	592
rights of —	
to abandon holding (s.87)	186,245
to make improvements (s.77)	186,259
to sub-divide holding (s.88).	186,267
to surrender holding (s.86)	186,233
to transfer and succession (s.18) . . .	182
to trees.	185
to use land	185
whether the holding of, protected interest (s.160(ff)	595
Reasonable and probable cause:	
denial of landlord's title without (s.186A)	640
Receipt for rent:	
court to grant, on deposit of rent (s.62(1)	403
landlord to grant, on payment of rent (s.56(1)	392
omission to grant, an offence (s.58). . .	393
Reclamation:	
of land, was improvement within the meaning of s.76(2)(c)(d).	262,263
of waste lands was an improvement (s.76(2)(c)	262
Reclamation leases:	
bar of sec.178 not applied in contracts in (s.178 proviso (i)	295
Reduction of rent:	
grounds of (s.38)	511-12
might be pleaded in defence in rent suit..	518
right of, not to be taken away by contract (s.178(3)(e)	519
right of non-occupancy raiyat to.	519-20
stipulation against (s.178(3)(e).	294,519
Re-entry:	
for breach of contract (ss.18(1)(b), 25(b), 44(b).	591,597,645
on abandonment (s.87(1)	246-47
on surrender (s.86(5)	238

	Page
Relief:	
against forfeiture (s.155(4).	593,599,648
Remedy:	
for illegal ejectment	641
Rent:	
abatement of.	362-74,432, 435,511
a first charge on the holding (s.65). . .	556,592,597
alteration of, on change of area (s.52) .	344
assignment of	562
claim for, a recurring cause of action. .	371,373
consolidation of abwab with	413,417
definition of (s.3(13).	312
deposit of (s.61)	394
effect of assignment of arrears of. . . .	562
enhancement of -	
by suit	457
by contract	490
fixity of (s.50).	332
initial rent of non-occupancy raiyat. . .	343
instalment of, (s.53)	375
interest on arrears of, (s.67).	383-86
liability for, on transfer of occupancy holding	316-17
liability for, of heirs of occupancy raiyat.	240,315
liability of auction purchaser for. . . .	324
obligation of occupancy raiyat to payment (s.24).	337
once enhanced not to be altered for 15 years.	490,509
payment of.	375
payment of, when no village office. . . .	378-79
presumption as to fair and equitable rent (s.27)	338
reduction of (s.38)	511
stipulation against reduction of (s.178(3)(e).	294,519
suit for, by co-sharer landlord	524
suit for, by outgoing landlord.	556-61
suspension of	430
time and place for payment of	376-79
when fell due (s.53).	375

Page

Rent decree:
bare assignee of, could not execute the decree even as a money decree. 562-63
difference between rent decree and money decree 552
effects of 552
effects of cessation of landlord's interest on. 556

Rent in kind:
presumption of section 50 applied to . . . 100-05

Rent Law Commission, 1880:
formation of 59

Rent receipt:
fine for withholding (s.58). 393
raiyat to obtain (s.56(1). 392

Rent sale:
incumbrance not ipso facto cancelled by. . 543
liability of acution purchaser in. 324
what passed at 552

Rent suit:
abatement of rent could be claimed in. . . 518
appeal in (s.153). 547
by assignee. 562
by co-sharer landlords 524,533
by outgoing landlord 556-61
issues in. 529
landlord not to bring successive rent suit 538
onus in. 534
particulars to be mentioned in the plaint in a (s.148(b). 539-40
parties in a 521
procedure in 538
provisions of Civil Procedure Code applicable to. 538
question of title, if could be raised in . 530
statutory disability in. 521
written statement in (s.148(i) 540-41

Revenue Sale Law:
effects of 48

Page

Salami 220,221

Sale:

an incumbrance not to be ipso facto cancelled on. 543
application to set aside. 545
confirmation of 545
of holding at fixed rate subject to registered and notified incumbrances (s.164) 542
of occupancy holding with power to avoid incumbrances (s.166(1). 542-43
setting aside of -
on deposit (s.174)(1) 545
on the ground of irregularity or fraud (s.174(3) 547

Sand:
abatement of rent for loss of land by deposit of. 366

Second appeal:
in rent suits 549
no second appeal in suits for distribution of rent or sub-division of holding 279

Set off:
plea of, in rent suit 371,372

Settled raiyat:
definition of (s.20) 114
distinction between occupancy raiyat and settled raiyat. 118-19
how a person became (s.20). 114-15
to have occupancy right 114
presumption as to a raiyat being a settled raiyat (s.20 (7). 116

Settlement:
decennial 22
permanent 23
quinquennial. 19,20

	Page
Staple food crops:	
enhancement on account of rise in the prices of (s.30(b).	461,475
price lists of (s.39(1) & (2)	482
Statement of accounts:	
raiyats entitled to (s.57(2).	393
Statement of situation, disignation etc.(s.148(b)	539-40
Sub-division:	
of raiyati holding.	267
Sub-lessee:	
effect on, by surrender of lease (s.86(6)	241-43
Succession:	
bar to recovery of rent pending notice of (s.16)	185,524
notice of (s.15).	523
Suit:	
by co-sharer landlord	524-29
for possession u/s 9 of the Specific Relief Act, 1877	641
for setting aside ex-parte decree for rent.	541
Surplus Sale proceeds:	
judgment-debtor entitled to the balance of (s.169(d).	325
Surrender:	
after transferring holding.	244-45
by raiyat (s.86).	237
contrasted with abandonment	243
effects of -	
on third parties (s.86(6)	241,242
on incumbrancer	242
heirs liable to pay rent unless they. . .	240
need not be in writing.	245
notice of, by raiyat (s.86(2)	239
rules to protect sub-lessees from collusive surrender	241,242

	Page
Suspension of provisions relating to enhancement of rent (s.75A).	490,509-10
Suspension of rent:	
case law for failure to deliver possession	431-35
case law for dispossession by the landlord	435-52
onus of proof in	454-55
principle underlying the doctrine.	430-31
right to, not lost by prescription	455
Tank:	
construction of, an improvement (s.76(2)(a)	262
occupancy right in	157
Tender of rent:	
by cheque.	380
condition of	380
effects of	380
how to be made (s.54(2).	377
provision as to (s.54)	377
Title:	
question of, might be investigated in rent suit.	531
Title paramount:	
dispossession by	364
Transfer:	
history of	203-21
of holding at fixed rate (s.18(1)(a) . . .	182
of occupancy holding (s.26B)	220
of occupancy holding to be by registered instrument (s.26C(1)	222
origin and development of the right to . .	204-06
proposal of the Rent Law Commission.on . .	209
service of notice of, on landlord.	222
Transferee:	
liability of, for arrears of rent (s.73) .	316-17
of landlord's interest, might fail to realise rent if omitted to notify transfer to raiyat (s.72).	315

	Page
Trees:	
custom relating to right to (s.23).	193-96
landlord could not cut trees in tenant's possession	196
right of occupancy raiyat to -	
under Rent Acts of 1859 and 1869.	192-93
under the Amending Act of 1928.	198
right of raiyat at fixed rates to (s.18(1)(d)	186
veto on contracts barring right to (s.178(1)(h).	199
Trespasser:	
occupancy right under a,.	144
Two annas rule:	
contracts in contravention of	495
Under-raiyat:	
acquisition of occupancy right by	121-22
Use of land:	
by raiyat at fixed rates.	185
by occupancy raiyat	186
Usufructuary mortgage:	
complete usufructuary mortgage (s.26G). . .	223,296-98
Utbandi lands:	
occupancy right in (s.180).	160-63
Utbandi tenancy:	
nature of	160-61
origin of	161
Veto:	
on contracts barring acquisition of occupancy right (s.178(1)(a).	173
Village:	
acquisition of status of settled raiyat by holding land for 12 years in the same village (s.21(1)	114
removal of residence from village, not necessary to constitute abandonment . . .	251

Page

Village office:
liability to pay rent even when there was no village office 378-79

Waiver of forfeiture 614-17

Waste land:
contract barring acquisition of occupancy right in lease for reclamation of (s.178 proviso (i) 295

Well:
construction of, presumed to be an improvement (s.76(2)(a) 262

Worship:
erection of a mosque for, was a misuse of land 189-90

Written statement:
not to be filed without leave of the Court in rent suits (s.148(i) 540-41

Zemindar:
combination of raiyats against. 56
extensive powers given to 36,38-39
position of, under Muslim Government. . . . 14 f.n.11,15
under Permanent Settlement proprietary right given to. 23-24

Zemindary system:
abolition of. 674

Ziraat land:
no right of occupancy in. 169
position of lessee of . . . . . 170.