About the Book

The peculiar rentier character of Bengalee middle class and its land-based culture pervaded the entire history of nineteenth century Bengal. Even now, on the wrong side of the twentieth century, the socio-political life of Bengalee middle class is deeply entrenched in the collection of feudal rent from land. The deep inroots of Bengalee mind can only be understood by unravelling the growth process of the hierarchy, not in land ownership but in revenue farming, after permanent settlement. This subinfeudation process has been analysed here with a typical case of Burdwan Raj, the best specimen of the Zamindari system in Bengal. Based on enactments and pronouncements by the judiciary under the British Raj, the analysis reveals the socio-economic environment of such infeudation.

About the Author

Born in 1926, in a family of reputed classical scholars, Dr. Harasankar Bhattacharyya was trained in economics in the University of Calcutta. He took up teaching in 1952. After a long stay in Burdwan Raj College he is now engaged as the Principal, T.D.B. College, Raniganj. Apart from teaching, he represented the teachers of affiliated colleges in the management of the University of Burdwan for more than twenty years.

A pioneer in writing reputed text-books on higher Economics in Bengali and English, Dr. Bhattacharyya writes with a strong sense of purpose and deep ideological overtones. A competent analyst, he writes with confidence and belief. Travelled far and wide, Dr. Bhattacharyya attended the International Conference for Development at Budapest in 1977, where he made significant contributions in the deliberations and debates. The present work is a revised version of his doctoral dissertation.

Zamindars and Patnidars

HARASANKAR BHATTACHARYYA

THE UNIVERSITY OF BURDWAN

ZAMINDARS AND PATNIDARS

STUDY OF SUBINFEUDATION UNDER
PERMANENT SETTLEMENT

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In sacred memory of my father
Professor Ashutosh Bhattacharyya, M.A.
Kavya-Vyakaran Tirtha
and my ancestors of
tarkabhusan family of Bengal
whose tradition of logical reasoning is to be
carried on

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HARASANKAR BHATTACHARYYA

CONTENTS

INTRODUCTION

Competent research works have appeared on the forces compelling the East India Company to adopt Regulation I of 1793, commonly known as Permanent Settlement. Equally competent works have shown how the ideas of the farmers of this innovation failed to materialise in practice. That the Zamindars did not develop as English type capitalist farmers or the Tenants did not shape themselves as French *Fermiers* is now an accepted proposition ; it is also admitted that a sprawling class of landed gentry appeared on the scene as revenue-farmers. But no study has yet taken place regarding the *modus operandi* of the growth of hierarchical rights in land under the Regulation I of 1793. This project is an attempt to unravel the mechanism of such subinfeudation and the legal framework developed in the nineteenth century through innumerable court cases veering round regulation VIII of 1819 within which this mechanism had to work.

In one sense it is a study of the Burdwan Raj model of infeudation. While other Zamindars also played the same game the Burdwan Raj initiated the process, almost perfected the structure before others could effectively conceive, and, therefore, can be called the *sui generies*, the best specimen, the leading species of what developed to be large genus. In this model the layers were not only few in number, *Patnidar*, *Dar-patnidar* and *Se-patnidar*, while in some other Zamindaries it was well above twenty, but also each link between these formations of revenue farmers resembled one other. The Burdwan model was very definitive and was broadly imitated in other Zamindaries ; and the East India Company, therefore, had to legalise, through Regulation VIII of 1819, the creation of such formations, thus giving a *dejure* recognition *post facto*. The Regulation, small in size, innocuous and simple, actually was full of historical potency ; in fact it became the key which unlocked the door of socio-economic changes of unparalleled magnitudes, as if a lockgate was opened to

release the waves. Events progressed ahead of law-makers, who thus found no other option than formalising them with legal sanctions.

A study of the legal framework is necessary not from the point of view of law itself, but to delve deeply into the complex process of the mechanics of subinfeudation. An analysis of the legal framework is also necessary to reveal the nature of property rights developed by the Permanent Settlement and thereafter by the British Judges through innumerable judgements in various court cases in our country and in the Privy Council. Law cases are furthermore important in clearly exposing the economic relationships developed between the layers of revenue farmer. The court cases would also exhibit the unity and conflict of interests between these various layers commonly bracketed in one and same "middle class". Thereby, the present study is an attempt to bring out the economic truths contained in the court documents or underlying the legal superstructure. Cases with economic import were only selected and judgements with economic bearing were only cited.

Such a study has become rather imperative as there is need for a break through in the present methodology of the study of socio-economic pattern in the nineteenth century Bengal. So far discussions are being carried on with such categories like the Zamindar, the Ryot, the landed gentry, the middle-class etc. These units are considered to be pure sets, whole and complete. The reality as evolved soon after the Settlement, however, happened to be widely different and the analytical outlines based on such undifferentiated categories had failed to approximate the reality. A rise in the production, prices and exports of food grains ; in the rental ; in the production ; prices and exports of cash-crops ; tenancy legislation ; mineral production ; railways expansion and growth of the market in general ; expansion and growth of the market centres could not and therefore did not, affect all the subsets equally. The annuitants were obviously less gainers or less losers than the last layer who had close and immediate relationship with the raiyats at the bottom. The right to collect rent

from the tenants was the *sine qua non* of the Zamindari, as also the right to use non-economic compulsions (like physical arrest, etc.) to exact rent from the defaulting ryots. The sub-infeudation meant a devolution of these rights, a percolation downwards, of the real substance of the Zamindari and in the process building up of a socio-economic superstructure, approved by the Regulations framed for the purpose and the decisions pronounced by honourable Judges. From the socio-econmic standpoint the zamindari resided only at that point where these rights were being used and the upper layers with each relinquishment of these rights, in exchange of some fixed annuity, became non-Zamindars for all purposes of historical analysis. The term zamindari became more legal or juridical rather than a socio-economic entity.

Differentiation of the Zamindar set into various subsets as *Patnidar, Dar-Patnidar, Se-Patnidar* and further under-tenure holders, as also of the Ryot set into various layers of under-ryots began from the day of the Settlement Regulations and it became real from the early days as the Zamindars were not given enough time or capital to invest. Pressure of high land-tax from the beginning left no option other than sub-letting, quick and immediate. The process was slower in the later years. But throughout the century, due to such differentiation going on continuously, the economic structure was in continuous evolution and the relationships were in constant flux. A legal framework had to be built up to smoothen the process, so that subinfeudation, leading to differentiation among the landed gentry, could take place without frictions. Study of court cases and judgements thereon reveal how internal contradictions were being resolved and knots were untied so that the wheel may move on.

The study carefully puts aside another almost parallel transition, that of the raiyats, whenever they could feel assured about the security of occupancy, went on creating subinfeudatory under-raiyats and so on. This discussion and the legal framework smoothening such transition has been kept in abeyance for the time being. It may be pointed out that in the

name of 'occupancy' the law of the land was lenient towards such infeudation also. Though an elaborate legal framework was not built up for the purpose, yet a close scrutiny of all the Regulations and enactments would show little awareness of the evil consequences of this transition on the part of the administration who squarely condemned the alienation by the Zamindars. A critical and detailed study of the nineteenth century Bengal economy can never ignore this parallel transition also, without moving further away from reality.

Furthermore, the socio-economic changes brought about by such infeudation was also not dealt with in depth, they have also been left out for the time being, and kept at a temporary slumber. The project has thus a very limited objective, only a partial study, a close focus, on the outline of the legal framework which facilitated the process. But this base discussion is considered to be necessary to illuminate the outlying areas with this changed perspective in future.

HARASANKAR BHATTACHARYYA

PART ONE

Economic Processes

CHAPTER I

NEED FOR THE PATNI

The legal institutional entity within which the economic phenomena of subinfeudation developed was *taluk*, an Arabic word, meaning 'something hanging or dependent'.[1] Taluks or tenures in the sense of intermediate interests between the Zamindar and the raiyats were wellknown during the Mughal rule.[2] One class of Talukdars sprung from the ancient "rajahs" who were allowed to retain their possessions, against payment of revenue demanded by the State. Such talukdars originally differed little, if at all from the Zamindars, and some of them, in course of time gradually grew up to be Zamindars themselves. The difference between them two is the degree of proximity to the State, the talukdar did not represent the State to the same extent as the Zamindar did.

Talukdars have been divided as Independent and Dependent. While the Independent talukdars used to pay revenue direct to the State the dependent ones paid their revenue through the Zamindar. Two paths led to talukdari[3] : 'The revenue would of course originally be paid to the ordinary officer and when that officer grew to be a Zamindar, the talookdar would sink into the position of a *muzkooree* instead of an *huzooree* malgoozar. On the other hand, the talookdar would tend himself to become a Zamindar and then would pay revenue direct to the State, and be a Zamindar in his talook, or an independent talookdar.' The *sunnud* in the case of independent taluks was the same in form as the Zamindar's *sunnud*.[4] But the acceptance of a *sunnud* was less insisted upon by the State as a condition of recognition in the case of independent talukdar, while the dependent talukdar would hardly require a *sunnud* from the State.[5] Taluk used to differ with a Zamindari in not requiring the confirmation of the State ; though that confirmation was required in case of

sale or exchange. Sir W. Boughton Rouse said that there was no distinction between the Zamindars and Talukdars in respect of permanent and hereditary proprietory right ; but that with respect to the judicial functions conferred by the *sunnud* there might be a difference ; the talukdar being generally but not universally subordinate : but when the talukdar took a separate *sunnud*, and had his name recorded as a separate proprietor, he paid his revenue direct to the Treasury.[6]

There was still another way in which taluks originated i.e., by the Zamindar allotting portions of the Zamindari or its revenue as a provision for dependents and relations, or as a reward for services. Some were also said to have been created in order to reclaim the wastes, forest-lands or marshy tracts. The enterprising colonisers became talukdars who in their turn also under-let in the same way as the Zamindars.

Both Grant and Shore have described these intermediaries rather exhaustively. According to Mr. Grant[7], within the larger Zamindari jurisdictions, sometimes the proper official possessors of these, and in many instances other natives called 'talookdars', held certain copy-hold rights of property, otherwise independent of the Zamindari ; and which being of inconsiderable extent, of accurately ascertained value, and fixed rental, frequently acquired by purchase, though generally in the first instance through court favour, 'bestowed on wealthy individuals resident in or near the Mussulman capitals', are usually allowed to descend by the rule of inheritence ; and with the special sanction of the dewani or financial administration may be otherwise transferred or sold at the discretion of the actual occupant ; reserving always to the crown its proper original dues of rent.

Shore's account of the talukdar was much more illuminating than that of Grant's.[8] According to him the word talukdar meant the holder of possessor of a dependency. The tenures held by persons under this description were dispersed over the whole country, and too various to be minutely ascertained. The principal distinction in the talukdars arose from the privilege which they possessed of paying their rents immediately

subordinate to that of the Government. Talukdars of this description differed but little from Zamindars ; except in the limited extent of territorial jurisdiction. They were all equally bound in the performance of the same services and the payment of rent. Lately, they had been made subject to an enhancement of their rents ; but this Shore understood to be contrary to more regular practice and usage. These talukdaris in general appeared to have been originally portions of Zamindaries, sold or given by the Zamindars ; and to have been separated from their jurisdiction, either with their consent, or by the interest of the talukdars with the governing power. Some may perhaps have been conferred by the special authority of the Dewan or Nazim in default of legal heirs, or in consequence of the dismissal of the former talukdars for delinquency. When the separations took place the rents of the taluks were regulated by the standard of the *toomar* with an accumulation of subsequent imposts and charges : and this was a reason assigned for the former established practice of limiting the talukdari rents to a fixed sum, not admitting of any increase. The talukdars, whose lands had not been separated from the Zamindari of which they were portions, used to pay their rents to the Zamindars by various rules ; some at a fixed rate consisting of the *toomar Jumma* and an addition for expenses ; others were assessed according to the variable demands of the Government upon the Zamindar, and used to pay their proportion of all the charge for which he was answerable. 'In Behar the talookdars paid according to the produce of their lands ; and enjoyed the same allowance which the Zamindars themselves possessed of ten per cent *malikana*.' Taluks of the latter description had chiefly been acquired by purchase, gift, or on condition of cultivating wastes or forest lands ; and far exceeded the proportion of those separated from the Zamindari jurisdiction. Some talukdars were little better than raiyats, with a right of perpetual occupancy whilst they discharged their rents to the terms of their *pattahs* or leases. It was generally understood as an universal rule that taluks ought not to be separated from a Zamindari unless the

Zamindars should be guilty of oppression or extortion upon the talukdars. The latter were as anxious to obtain the immunity, as the former were strenuous in opposing it ; for exclusive of the diminution of their jurisdiction, they would by this separation lose, what perhaps they have no right to exact, a *russoom* or fee which they generally levied over and above the established rents of the taluks. This, when talukdars were in other respects treated with leniency and justice, was acquiesced in without demur. All talukdars, unless restricted by the terms of grants under which they held, had a right to dispose of their lands by sale, gift or otherwise, still subject to the same dues to which they themselves were liable ; and indeed this practice prevailed in opposition to the condition of their *pattahs*. A Zamindar had no power to resume or dispose of the lands of a talukdar. From this explanation it must appear extraordinary that a talukdar, or holder of a dependent jurisdiction, should (as has been asserted) possess a right which is denied to his superior ; that of disposing of his lands by sale. And Shore concludes : 'In my opinion the acknowledged rights of all talukdars, whether paying their revenues to the Khalsa or to the Zamindars, being invested with the same right ; for we cannot on any principle admit that the latter could convey a privilege to others which they do not themselves possess.'

At the time of Decennial Settlement Taluks were classified as (1) Taluks for 'which revenue was paid through Zamindars and the title-deeds in respect of which contained a stipulation that it should be so paid'[9], (2) Taluks held under grants from Zamindars which did not expressly transfer the property in the soil, but operated simply as leases on terms of payment of rent and other conditions ; (3) *Jungle buri* taluks held under-permanent leases on conditions of clearance of jungle lands and payment of fixed amount of revenue after a fixed rent-free period, and (4) Taluks which might have been recorded as independent.

The section 8 of Reg. VIII of 1793 described the process of reclamation and the creation of *jungle buri* (also the *patitabadi*)

taluks : 'The *pattas* granted to these talookdars in consideration of the grantee clearing away the jungle and bringing the land into a productive state, give it to him and his heirs in perpetuity, with the right of disposing of it either by sale or gift, exempting him from payment of revenue for a certain term, and the expiration of it subjecting him to a specific *asal jumma* ; with all increases, *abwabs* and *mathoots*[10] imposed on the pargana generally ; but this for such part of the land only as the grantee brings into a state of cultivation ; and the grantee is further subject to the payment of a certain specified portion of all complimentary presents and fees, which he may receive from his undertenants, exclusive of the fixed revenue. The *patta* specifies the boundaries of the land granted, but not the quantity of it, until it is brought into cultivation.'

Ganti tenures of Jessore and Khulna and *Howla* tenures of Backerganj are also of the similar nature. The *jotedars* of Rangpur and adjoining districts also originated from reclamations, they held land directly from the Zamindars. The jotedars also sub-let to subtenants called *Chukanidars*. *Chakladars* held land from generations and used to enjoy permanent tenure.

Regulation VIII of 1793 classified the taluks into four groups : (1) *Mukarari*, for which rent was fixed and not enhanceable (Sections 16 to 18) ; in perpetuity at fixed rent, and payment had been made of such fixed rent for more than twelve years before Permanent Settlement ; neither the grantor, nor his heirs, nor even the government, could enhance the rent ; (2) *Istimrari*, which were heritable and transferable, but whose rent are liable to enhancement according to custom (Section 19 and 49) ; (3) *Istimrari-Mukarari*, which are heritable and whose rents were fixed in perpetuity (Sec. 49) and (4) Under-farmers (Sec. 60).

Next to the Zamindars, the talukdars, were considered to be important and 'Lord Cornwallis could discover no difference between the two.'[11] The Settlement did not admit all talukdars as independent ones, the majority of them were asked to pay revenue through these Zamindars and in this process were reduced to the position of dependent ones. Those accepted as

independent talukdars were settled in the same manner as with the Zamindars.[12] The Decennial Settlement regulations provided that in case a Zamindar pressed for unauthorized exactions or made some oppressions then the dependent talukdari may be separated from the Zamindari.[13] The Regulation VIII of 1793 omitted this provision.[14] Such an omission was not a very mean shift in policy, as it led to a rather big change in the relationship between the Lord and the Vassal, or further subjugation of the talukdars to the Zamindars, the former were made more dependent to the latter. Even if the talukdars could prove a case of unauthorised exaction or oppression the talukdari will not get separated from the Zamindari and will continue to be its subservient. More important was the case of jungle buri taluks. The Regulations provided that they were not to be separated, though they were highly entitled to be separated and made independent, because the nature[15] and origin showed that such enterprizing talukdars really brought waste lands into cultivation. As regards the taluks ordered to be separated, it was provided that the holders of them were not to be permitted to pay their revenue through the Zamindar.[16] It was also provided that the dependent talukdars were to have agreements for the same period with the Zamindar as the Zamindar's own settlement with the State, that is, as would seem perpetual under the Permanent Settlement.[17]

Still another class of intermediary talukdars, a sub-class of dependent talukdar, was mentioned in the Permanent Settlement Regulations. Their taluks were held under contract in writing or *sunnuds* from the Zamindar or other actual proprietor which did not expressly transfer the property in the land, but only entitled the talukdar to possession so long as he paid the rent and performed the conditions specified therein. These were considered leaseholders only and not actual proprietors of the soil ; and provided they had continued to pay rent to the Zamindars were not entitled to separation.[18]

The rules in the Decennial and Permanent Settlement Regulations for the separation of independent taluks seemed to admit that such separation could be made at any period. It

was provided by Regulation I of 1801 Section 14, that no further separation should be permitted after a year from the date of that Regulation ; and it was declared that these Regulations were only intended to provide for separation at the time of the Decennial Settlement, and not to apply to new taluks constituted since that period.

The rent of the dependent talukdar was not to be increased on account of any rise in the Zamindar's *jumma,* except upon proof to the collector that the Zamindar was entitled to enhance either (i) by the special custom of the district, or (ii) by conditions under which the talukdar held his tenure, or (iii) that the talukdar by receiving abatement from his *jumma* had subjected himself to such rise, and (iv) that the lands were capable of affording it.[19] The decision whether purchasers at sales for arrear of revenue were not to be entitled to disturb the possession of intermediaries by enhancing rents had to wait till Regulation XI of 1822, Sec. 32. By Act X of 1859, Section 15, and Act III of 1869, Sec. 16, it was enacted that 'no dependent talukdar or other person possessing a permanent transferable interest in land, intermediate between the proprietor of an estate and raiyat, who holds his taluk or tenure (otherwise than under a terminable lease) at a fixed rent, which has not been changed from the time of the Permanent Settlement, shall be liable to any enhancement of such rent, notwithstanding anything in Section 51 of Regulation VIII of 1793 or any other law.' The *howlas* and *neem-howlas* of Backerganj and the *jotes* of Rangpur, which were *mouroosee* and hereditary, but were not *mukarari*, or held at fixed rents.[20]

As regards the mukarari holdings or holding at a fixed rate, provision was made by the Regulations of 23rd November, 1791, and Regulation VIII of 1793, that mukarari leases to persons other than proprietors of the land, if granted or confirmed by the Government or obtained before the accession to the Dewanny, were to be continued in force during the lives of the lessees ; but on their death the settlement was to be made with the actual proprietors of the soil.[21] This provision clearly referred to mukarari malgoozars. It was also provided that mukarari

grants to the actual proprietors of the soil were under the same circumstances to be continued, without limiting the continuance to the holder's life. Istemrari and mouroosee tenures were considered to be of the same class. An istemrari or mouroosee tenure was permanent hereditary tenure; if it was mukarari it was held permanently at a fixed rent or revenue.[21] Istemrari tenures were mentioned in the Regulations for the Decennial and Permanent Settlements. The holding in perpetuity was considered to be less in the nature of an encroachment on the proprietory rights than the holding at a fixed rate; probably because the latter appeared to leave the supposed proprietor a less beneficial property in the land, but to give the fruits of all improvements or increase in the cultivation to the mukararidar. Accordingly, istemrardars were spoken of as not having got possession to the exclusion or without the consent of the proprietors, as the mukararidars were supposed to have done. They were looked upon as holding of the proprietors by lease, and were to be considered as a species of *pattah* talukdars, and the settlement was made with them. Thus they were put in the position of direct revenue payers though they were considered subordinate to the Zamindars. On the other hand, the mukararidars, who were paying revenue direct, were placed in a lower class.

Thus 'all the under-tenures in Bengal have not, however, been created since the Permanent Settlement.....Dependent talooks, ganties, howalas, and similar fixed and transferable under-tenures existed before the Settlement. Their permanent character was practically recognised at the time of the Settlement, and has at any rate since been confirmed by lapse of time... The general provisions of the Regulations of 1793 were favour of the tenant. The theory of the Permanent Settlement was to give to all underholders, down the ryots, the same security of tenure as against the Zamindars, which the Zamindar had as against the Government, sub-holders of talooks and other divisons under the Zamindars were recognised and protected in their holdings, subject to the payment of the established dues.'[23]

The Bengal Administration Report, however, pointed out that since the Permanent Settlement, the trend of sub-infeudation has greatly accelerated.[24] The Administration Report noted that at the Permanent Settlement, government by abdicating its position as exclusive possessor of the soil, and contenting itself with a permanent rent-charge on land, escaped thenceforward all the labour and risks attendant upon detailed moffussil management. The Zamindars of Bengal Proper were not slow to follow the example set before them, and immediately began to dispose of their Zamindaries in a similar manner. Permanent undertenures, known as patni tenures were created in large numbers, and extensive tracts were leased out on long terms. By the year 1819, permanent alienations of the kind described had been so extensively effected, that they were formally legalized by Regulation VIII of that year, and the means afforded to the Zamindar for recovering arrears of rent from his patnidars were almost identical with those by which the demands of Government were enforced against the Zamindar himself. The practice of granting such undertenures had steadily continued, 'until at the present day, with the patni and subordinate tenures in Bengal Proper and the farming system of Behar, but a small proportion of the whole permanently settled area remains in the direct possession of the Zamindars.' In these alienations the Zamindars have made far better terms for themselves than the Government was able to make for itself in 1793. It had rarely happened that a patni, or even a lease for a term of years had been otherwise than on payment of a bonus, which had discounted the contingency of many years' increased rents. It was a system by which, in its adoption by the Zamindars, their posterity suffered, because it was clear that, if the bonus were not exacted, a higher rental could be permanently obtained from the land. This consideration, however, did not have much practical weight with the landholders. 'And if gradual accession to the wealth and influence of sub-proprietors be a desirable thing in the interest of the community, the selfishness of the landholding class is not in this instance of it a subject for regret.'

The Administration Report also pointed out that the process of sub-infeudation had not terminated with the patnidars and ijaradars. Lower gradations of sub-tenures under them, called dur-patnidar and dur-ijaradars, and even further subordinate tenure were created in great numbers. And not unfrequently, especially where particular lands were required for the growth of special crops such as indigo, superior holders were taken undertenures from the own tenants. These tenures and undertenures, often comprised defined tracts of land ; but a common practice had been to sublet certain aliquot shares of the whole superior, the consequence of which was that the tenants in any particular village of an estate usually paid their rents to two or many more than two, different masters, 'so many annas in the rupee to each'. It must be added that in many cases where an estate or tenure has been sublet, the lessor had reserved certain portion, generally those immediately contiguous to his residence, in his own possession. These he might cultivate by keeping raiyats upon them, or, especially if he be a European indigo-planter, by hired labour.

The expanse and complexities of subinfeudation developed since Permanent Settlement were very clearly illuminated in an article in Calcutta Review.[25] 'When all intermediate (even to the very lowest) interests became rights of property in land, not only could the owner of any such interest carve it as a subject of property into other interests, by encumbering or alienating within the limits of the right, but even his ownership itself might be of that complex heterogeneous kind, which is seen in Hindoo joint-parcenary.'

'Let us look more nearly at the first side of the proposition. Remembering that a middle tenure or interest below the revenue paying Zamindar resembles the primary Zamindari, and is essentially the right, on payment of the proper *jumma* to a superior holder, to make collections from the cultivators of land, and to take the *jummas* from subordinate holders within a specified area, we see that as soon as the tenure is converted into a proprietory right, there must almost necesarily be a constant tendency to the creation of minor tenures. The

owner of the smallest and lowest tenure is severed from the land itself by the customary occupation of the ryots, and the ryotee-tenures, if there are any ; indeed, the ryot holding contain more of that which goes to constitute the English idea of land property than to the middle tenures, although it is not always easy to draw the line which separate the two. The middle tenure of every degree is thus in a great measure an account-book matter, and is very completely represented by the *jummabandi* paper. If the owner of such a property desires to benefit a child, or a family connexion, he can do so by making a mukerreree grant in some form of a portion of his collections. It would be no easy matter to describe fully the various shapes which such a grant is capable of taking. It may cover a part of a village only, or a whole village, or many villages (according to the circumstances of the Grantor and transaction), and may convey the right to take the rents, dues and *jummas* within that area by entireties ; or it may convey the right to take fractional part only of them ; or again, it may convey the entireties for some villages, and fractional parts for others, and so on. Most frequently the tenure of the grantor himself amounts only to a right to a fractional share of the rents, etc., and then his grant will pass a fraction of a fraction. But not only may a tenureholder make a grant of this nature to some one whom he desires to benefit, he may do the like to a stranger in consideration of a bonus or premium. Again, he may do so with the view to ensure to himself, in the shape of the rent reserved on the subject of grant, the regular receipt of money wherewith to pay his own *jumma* or he may, by way of affording security for the repayment of a loan of money made to him, temporarily assign to the lender under a *Zar-i-peshgi ticca* his tenure-right of making collections. In these or similar modes, the Bengalee tenureholder, landed proprietor, or Zamindar (however he may be disignated) is obliged to deal with his interest when he wants to raise money, or to confer a benefit ; and it is obvious that in each instance (excepting that of out and out sale of the entirerty of his interest, to which he rarely has recourse, if he can avoid it), he creates a fresh set of proprietory right.'

Mr Philips in his Tagore Law Lectures had tried to provide us with some of the names and forms of subinfeudatory rights. According to him, it was not possible to give any exhaustive account of these innumerable under-tenures : 'and in many cases what is called a tenure has no distinctive feature ; and the name it bears is given, not an account of any peculiarity in the nature of the holding itself, but to indicate the kind of land cultivated or the crop produced, or the mode in which rent is paid.' According to his summarisation 'we have (1) *Sali* land, land wholly submerged during the rains ; (2) *Suna* land, not so submerged ; (3) *Nakdi* land or *neckdy* land, of which rent is paid in cash at a certain rate for the bigah ; (4) *bhaoli* land, of which rent is paid in kind, the rent being a share of the produce ; (5) *bhiti*, raised house-site land ; (6) *uthbandi or ootbundee*, in which the ryot pays for so much of his holding as he actually cultivates'.[26]

These names were frequently met with as names of tenures ; whereas several of them were not so much indicative of any peculiarity of tenure as the kind of land held, and the mode of paying rent. This will appear more clearly from an enumeration of some of the various so-called tenures. Thus we had *ausat* or *ousat*, a name used in Backerganj to denote a subordinate taluk ; and *nim* (or neem) *ousat*, a subdivision of ousat taluk ;[27] *ihtimaur*, a name given to small taluks in Chittagong, and formerly used in Burdwan and Rajshahye : *howla*, a Buckerganj name for a small taluk,[28] and *nim howla*, a half howla.[29] We mentioned also of *ousat howlas*, a general name for tenures intermediate between those of the Zamindar and the raiyat ; and of *bye-howlas*, or subdivisions of a nim howla.[31] Again a tenure subordinate to a howla was called a *Zimma*. There was a tenure called *tashkisi zimma* held upon payment of the current rates of the district.[32] In Rangpur we could find a tenure called *upanchaki*, a name said to be derived from a cess of one-fifth ; it was apparently a mukarari-istemrari tenure.[33] So also the *surbarakaree* tenures of Cuttack, which were permanent and hereditary and with the consent of the Zamindar, transferable.[34] *Bekhbirt*

was a name given to taluks sometimes of considerable size in Sarun. A *gantie* or *ganthe* was a hereditary tenure at a fixed rent.[35] The name was said to be derived from a sanskrit word meaning a knot or engagement. *Birt* land was held for religious purposes or by Brahmins free of revenue, and it was held under a heritable istemrari tenure sometimes known as *birth ijara*.[36] There was a tenure in sylhet called *nirasdaree* also of an istemrari heritable nature.[37] The *mulgenies* of canara are perpetual tenures usually granted on payment of a fine, and are transferable and hereditary, reverting however to the landlord on failure of heirs.[38]

Leases and farms were also known under various names, as *izara* or *ijara*, and *thika* (from thick or exact), a lease at a certain amount of rent, holder of this kind might have no land under his own cultivation within the district leased to him, but only farm the rents.[39] *Kutkina* is a sub-lease by a farmer or under-farmer, who again might have no direct connection with the soil.[40] Below these again were *dur-ijaras* and *dur-kutkinas*, and so on in a line of subinfeudation which was apparently without end. *Moostajir* was another name for a farmer.[41]

Since 1793, none of the big Zamindars (mentioned by Mr Shore) and the Talukdars, with whom the agreement was reached, transformed himself as a capitalist farmer, and they started subletting their lands to intermediary tenure holders. In the matter of subinfeudation no Zamindari could be taken as 'typical', in some cases the infeudation was carried up to three layers (such as in Burdwan, 'Patnidar', 'Dar-patnidar' and 'Se-patnidar'). Under Betia Raj there was only two, either a Thikadar or a Mukarariдar, who in some cases, sublet his Zamindari rights to a Katkinadar. In other places the situation was much more complex : '162 revenue terms were used to describe the various forms of tenures and subtenures. Between the proprietor and the actual cultivator, there might be eight to twenty grades of intermediary tenures.'[42] Bengal-Land Revenue Commission, commonly known as Floud Commission, pointed out that the creation of a number of intermediate interests between the Zamindar and the actual cultivator in

some districts has reached fantastic proportions. 'The report of the Simon Commission pointed out that in some cases as many as 50 or more intermediate interests have been created between the Zamindar at the top and the actual cultivator at the bottom'.[43]

The legal basis of such infeudation was the concept of *Zamindari tenure* or the nature of property rights which it connoted. Field,[44] following Harrington, had ennumerated the characteristics of the Zamindari property broadly in the following manner : A Zamindari property is an absolute right of proprietorship in the soil, subject to the payment of a fixed amount of revenue to the Government. If this revenue fall into arrears the estate may be put up to auction and sold to the highest bidder. The purchaser acquires the estate free of all incumbrances, created since the time of the Permanent Settlement and obtains a statutory title. A *Zamindari* is inheritable according to the Law of succession by which the proprietor is governed. It is assignable in whole or in part. It may be mortgaged. The Zamindar can grant leases either for a term or in perpetuity. He is entitled to rent for all land lying within the limits of his Zamindari and the right of mining, fishing and other incorporeal rights are included in his proprietorship.

There were strong basic and immediate compulsions for subinfeudation under Permanent Settlement in spite of the objective of the framers who wanted the Zamindars to develop on the model of those of England. The British conquest of India began in the mid-18th century when England had not yet gone through the industrial revolution, and the methods used for India's colonial exploitation in the later years of the 18th or the early years of the 19th century were typical of the methods of 'primary accumulation of capital.' The main method was the exploitation through land-taxation or, as Marx wrote 'the direct exploitation of the territory'. Maximum possible revenue through high land-taxation played the determining role in the development of agrarian relations.

That there was a drastic rise in the land-tax during the

Permanent Settlement is now an accepted conclusion. Fixed taxes were introduced in Bengal, Bihar and Orissa in 1793 after the land-tax had been repeatedly increased in the course of approximately thirty years. This tax was so much so high that it became, as Marx pointed out, a caricature of big private property in land because the taxes swallowed up a large portion (up to nine-tenths) of the proprietory income.

That the land-tax was high enough was maintained by no less a person than Lord Cornwallis himself. In his letter, dated 6th March, 1793, to the Court of Directors, he wrote, 'it is the expectation of bringing them (the extensive waste and jungle lands)[45] into cultivation and reaping the profit of them that has induced many (of the Zamindars) to the decennial jumma which has been assessed upon their lands.' In the same letter he wrote that 'it (was) their additional resource alone which (could) place the landholders in a state of affluence and enable them to guard against innundation and draught, the two calamities to which the country must ever be liable.'

Thomas Colebrook in *Husbandry of Bengal* (1794-1804) wrote with reference to Lower Bengal that due to annual innundation it required "patient industry" of the peasants and the landowing classes. He however, forgot to mention that an enormous sum of capital also was required and a long period of time must elapse to construct 'stupendous dikes not altogether preventing but checking its sudden excesses.' Till that time this function was performed by the State itself from its own revenue. Now this was supposed to be done by the Zamindars who were already in heavy debt due to previous auctions of their Zamindaries during the experimental periods of the Dewani. Thus the Zamindars had to find out persons who could give them some money to liquidate their debts or to pay off *kists* as also reclaim lands. Without some such *pattan* the Zamindars, depleted of capital, could not expect reclamation at all.

Moreover this high land-tax was ruthlessly enforced by the company at the expense of the fedual landowners themselves, often by direct expropriation of their holdings, rights and in-

comes, even when it faced no resistance from these feudal lords. The intensification of non-economic compulsions can be understood by an analysis of the process of realisation of the public revenue in case of default. The first Regulation on the Statute Book is Regulation XIV of 1793. There were two classes of defaulters contemplated by this Regulation viz. I—Zamindars, independent-talukdars (Sec. 5, Reg. VIII of 1793), and other actual proprietors of land ; and II—Farmers of land, holding farms immediately of overnment. In respect of the former, the Regulation provided the following process : (1) The issue and service of a written demand (*dastak*, Sec. 3) ; (2) Arrest and confinement (Sec. 4) ; (3) Deputation of an Amin to collect the rents and revenues from the estate or farm of the defaulter (Sec. 6), which was virtual attachment ; (4) Sale of the estate or a portion thereof, with the sanction of the Governor-General (Ses. 13 and 22) ; (5) If the whole amount due were not realized by the sale of the revenue-paying lands of the defaulter, then by attachment and sale of his other real and personal property (Secs. 44). Article 6 of the proclamation also declared that 'no claims or application for suspensions or remissions, on account of draught, inundation or other calamity of seasons, will be attended to.' An account of the sales of 1796-98 shows that the sale prices hardly covered the arrears. In many cases there were no bids, and Mr Ascoli in his 'Early Revenue History of Bengal' stated that in Dacca estates had to be resettled at a reduced demand. The rigour of this provision was, however, somewhat "relaxed" by Regulation III of the following year. This Regulation restricted such confinement to cases where the amount due might not be recoverable by the public sale of the estate or other properties of the defaulter (Secs. 3 and 14). These provisions about arrest and confinement remained in force throughout the Company's period. They became obsolete only after the Act XI of 1859, and were rescinded and repealed by Act VII of 1868 and the Obsolete Enactments Repealing Act XVI of 1874. Provisions about seizure and sale of *other* properties, real or personal, remained also operative throughout the Company's period.

They became obsolete after Act XI of 1859 which did not incorporate any such procedure, and they were ultimately repealed by Act XVI of 1874. Temporary dispossession of the Zamindar and taking over of the estate under direct management for a time which was the usual procedure of the Mughal Government, was retained by the Company (Regulation XIV of 1793, Secs. 6 and 25). In spite of such stringent measures the sales of estates for arrears were very extensive. Estate after estates were knocked down, and it was estimated that by 1812 more than half of the estates in Bengal had passed out of the hands of their original owners. And set between the two blades, high rent and corporal punishment, the Zamindars had to take recourse to subinfeudation extensively.

The provisions made by the Regulations for the protection of raiyats went against the Zamindars and thus the latter had to take recourse to subinfeudation. Several important measures to protect the *Khudkhast* raiyats (resident cultivators) were adopted : *First*, Regulation *VIII* of 1793 provided for the grant of *pattahs* by Zamindars clearly stating the quantum of land, the amount of rent etc. It was decided that no oral tenancies would continue after the Settlement and therefore the raiyat would have no insecurity and uncertainty.[46] *Second*, the imposition of extra cesses and exaction (i.e. abwabs) were prohibited. *Third*, the rent payable by each raiyat was to be fixed at the pargana or established rate. *Fourth*, in case of any dispute with regard to the amount of rent to be entered in *pattahs*, the matter would be referred to the Civil Court. *Fifth*, it was provided that the raiyats were entitled to obtain receipts for all payments made to the Zamindars. And *lastly*, so long as the tenant paid his rent he could not be evicted from his land. Even on sale of a Zamindari for arrears of revenue, the purchaser was to have no power to evict any *Khudkhast* raiyat if he had paid the rent and obtained a pattah. It was thought that 'fixity of tenure and fixity of rent-rates were secured to the raiyat by law.'[47]

The idea behind such protection was clearly enumerated by the Court of Directors in their despatch dated 19th September, 1792 (Paragraph 40). Again in their despatch, dated 1st

February, 1811, it was reiterated thus : 'The objects of that settlement (Permanent Settlement) were to confer upon the different orders of the community a security of property.' In short, the framers expected to establish a relationship of inter-dependence or complementarity of interests between the Zamindars and the raiyats. The basic antagonism between their conflicting interests was overlooked. It was never considered that the interests of these two can never be complementary or a security of property of one section obviously leads to an insecurity of property in the other. It was thought that the enlightened self-interest of the Zamindars would be the best guarantee of the raiyats' rights. Though Civil Courts were established to settle the Zamindar-tenant disputes, it was hoped that 'parties, on experiencing the inconvenience, expense and delay, combined with the uncertainty attendant on decisions in the newly constituted courts of justice, will come to a reasonable agreement between themselves : Zamindars, for the sake of retaining the cultivator, by whose means alone his estate can be rendered productive, and the cultivator, for the sake of gaining subsistence on the spot where he has been accustomed to reside.'[43]

Still it was found that the revenue was not being realised with desired punctuality. Taking advantage of the delay with which the process for disposing their lands was unavoidably attended when the orders of the Board of Revenue and of the Govenor-General had, in those days of imperfect means of communication, to be obtained before a sale could be made—many of the Zamindars withheld payment until the very day of the sale. They were also profited by the want of information in the public officers of the "actual produce" of their estates on the basis of which sales would be conducted. Instead of preventing, the Zamindars sometimes encouraged the public sale of portions of their lands for the purpose of repurchasing the same in fictitious names or in the names of the close relatives at a much reduced assessment. They also tried to reduce their total assessment by overrating the proportion sold.

The Select Committee, in their *Fifth Report* were not so much

disposed to blame the Zamindars as to attribute these results to a change of the system. The Report did not hit to the core of the problem i.e. the high land-tax, but pointed out very forcibly, that the new system had abolished, under severe penalities, the exercise of powers formerly allowed to the landholders over their tenantry, and had referred all personal coercion, as well as the adjustment of disputed claims to the newly established Courts of justice ; that these Courts were utterly unable to cope with the work thus thrown upon them (in Burdwan there were more than thirty thousand cases before the Judge) ; that the determination of single suit could not be expected in the course of the plaintiff's life ; that the cultivators, taking advantage of the inability of the Courts to afford redress to the Zamindars' sufference ; that the rules for the distraint of the crop or other property, founded on practice in Europe, and intended to enable the Zamindars to realise their own rents, by which means alone they could perform their engagements with the government, were ill-understood, and not found to be of easy practice.

The *Fifth Report* also pointed out, that the proportion of the produce, fixed as the government share, viz., ten-elevenths of the rent paid by the tenantry, was in most cases a large proportion ; and it required the most attentive and active management to enable a landholder to discharge his instalments with the exact punctuality required by the law. But landholders, as a rule, were not capable of such management, 'being in the habit of leaving their affairs to servants who were accustomed to seek for the means of extricating themselves from difficulties in intrigues with superior authorities rather than in their own individual exertions.' Under these circumstances, the Committee 'conceived it to have been shown' that the great transfer of landed property by public sale, and the dispossession of the Zamindars, which took place within a few years after the conclusion of the Permanent Settlement, could not be altogether ascribed to the profligacy, extravagance, and mismanagement of the landholders, but had to a certain extent followed as 'the unavoidable consequences of defects in the public regulations combined with inequalities in the assessment,

and with the difficulties, obstructions, and delays with which the many nice distinctions and complex provisions of the new code of Regulation, were brought into operation among the illiterate persons who were required to observe them.' Mr Marshman correctly said : 'In the course of seven years, dating from 1793, most of the great Zamindars who have survived the Commissions for more than a century, were evicted from the estates of which they had been recently declared the sole proprietors. It was a great social revolution, effecting more than a third of the tenures of land, in a country of the size of England.'[49] Field concludes that 'The Raja of Burdwan was the only one of the great Zamindars who escaped, and the invention of the Patni system is said to have saved him.'[50]

The objectives of the framers of Permanent Settlement, viz., development of landlords as capitalist-farmers, could have been partially fulfilled if there were no destruction of Indian handicrafts during the period. The period between 1793 and 1819 was also the period of de-industrialisation in India. There could be no capitalist farmers without extension of exchange and marketing in agricultural produce. With decline of cotton, commercialisation of agriculture was nowhere to be seen. Indigo came in the thirties. Thus the incentive was also absent along with the incapacity to invest and subinfeudation had to become the pattern of land-management under the Settlement.

Absenteeism is sometimes taken as a cause of subinfeudation. One must remember, however, that absenteeism is more an effect than a cause of subinfeudation. Assured of a fixed annual rental the Zamindars found no time in shifting themselves to comfortable abodes or centres of luxurious living. Sometimes they continued to stay in their original place of residence but completely absented themselves from the mode of production prevailing around them and from which their annuinant generated. Mr T. Roy Chaudhuri correctly remarks : 'In fact, however, absenteeism was not a matter of the Zamindars' physical absence from the vicinity of these estates. The Zamindar might never stir from his village home and yet take only a very casual interest in the management of his estates ;

and this appears to have been the state of affairs in most cases.'[51]

A few observations may not be wholly unwarranted. The relation between Zamindar and the tenureholders turned out to be such that the substance of Zamindari itself was transferred to these intemediaries in exchange of the annuity. The tenureholders were given pattahs which transferred most of the Zamindari rights to them. Each one of them had to deposit a specific amount as security with the Zamindar on which no interest was allowed. This sum was credited to him as rent due on the last instalment of the last year of the term or that year in which the lease was cancelled for some reason or the other. A tenureholder executed a *Kabuliyat* after receiving the *pattah*. The exchange of *pattah* and *Kabuliyat* was necessary, without which the lease did not have any legal validity. The *pattah* was granted on condition that the tenureholder, according to the terms stated in it, might enjoy the income of the Zamindari under lease provided he maintained raiyats in peace and paid the rent to the Zamindar without default. In case these conditions were violated, the lease was liable to cancellation.[52] Thus the intermediate tenureholders were, to all intents and purposes, turned into Zamindars of all the villages leased out to them. In theory they had to collect rents on the basis of rent-rolls provided by their lessors and the difference between the amount of the raiyati rental and the thikadari or mukarari rental was their profit. They were not authorised to enhance rents or reject occupancy raiyats. In practice, however, these restrictions on the tenureholders were meaningless. Since there was no deduction from the rental of tenureholders to provide for the cost of collection and to allow a decent margin of remuneration to them, they could not refrain from realising illegal cesses and adopting other means to enrich themselves. Thus, in practice, the intermediaries became Zamindars, with permanent stake in the taluks under them while the Zamindar's income was fixed, these intermediaries could squeeze the tenants as much as possible. The Zamindar did not intervene even when

complaints of ill-treatment and extortion were received from the raiyats against the tenure-holders though they had theoritically reserved the right to do so.

There was some difference between subinfeudation in Bihar and Bengal Zamindaries. The layers of intermediaries in Bihar were only two or three and never twenty or forty as in the case of Bengal. Moreover, in Bihar, European planters turned themselves into intermediate tenureholders, and this scene was more or less absent in Bengal. In Bihar as in Bengal, the Zamindars used to collect rent through intermediaries much before Permanent Settlement. In the Bettiah Raj, intermediary tenures were also granted as reward for past services, which were commonly known as *bekh birts*. Since the Settlement in 1793, intermediary tenures, excepting bekh birts, assumed two forms, *thika* and *mukarari* 'The basic difference between the two forms was that while the former were for a specific period and generally for a short one, the latter were permanent. Moreover in the case of thika tenures rentals were liable to be altered.'[53] It is also interesting to note that the European tenureholders never resorted to subletting. Planters sought thika and mukarari tenures not for rental income but for increasing their profit made from indigo by extending the area under its cultivation.

There were two main systems of indigo cultivation, viz. *nij or zirat* (own cultivation) and *raiyati or assamiwar* (cultivation through tenants). Under the zirat system the planter himself grew indigo on certain holdings at his own expense with hired wage labour. But such scatttered zirat cultivation did not develop into capitalist farming.[54] 'The existing practice of farming out Zamindaries afforded golden opportunity to planters to go in for the assamiwar system of indigo cultivation. They could acquire Zamindari rights by becoming intermediary tenureholders and through the exercise of the Zamindari rights they could force the raiyats to execute *sattas* (written contracts) on the terms dictated by them.'[55]

Moreover, in course of time, through years, the situation became complex through constant interlacing between innumerable lessor and lessees. A raiyat had also as much right to sublet as a tenureholder, but the point of difference is that while the subtenant of a raiyat became an under-raiyat with inferior rights, the subtenant of a tenureholder became a full raiyat, who had occupancy right forthwith. Tenureholders were sometimes of several grades and the term "tenure" included "under-tenures". Through sales and purchases, written and oral contracts, the under-tenures held raiyati interests, the raiyats held undertenures, the Zamindars acquired raiyati and under-rayati interests and a host of interlacing intermediaries developed in this process of transfer. The only common element among them was their unending passionate drive, towards achieving a noncultivator status, towards becoming one of the rentiers, towards pushing oneself away from the actual production processes in agriculture but reaping something out of those so called legal rights, towards being considered a member of the middle class. Prof Tapan Ray Chaudhuri very rightly remarks,[56] "It is necessary to emphasise that in its personal aspect the tenurial structure was not marked by any clear gradation. The same individuals or families might be proprietors as well as tenureholders, holding land under a dozen different tenures at various grade,.....The same person often was land-lord as well as tenant in relation to another.'

Such interlacing of interests between the various layers of intermediaries was due to the operation of the sale laws. Sales and purchases by the same persons, in his own name as also in the names of members of the family, open or clandestine, became the mode of operation of subinfeudation. Combined with litigation and the laws of inheritence, and the innumerable court cases the situation grew more and more complex. 'Under-tenures enabled old Zamindars to retain a hold on property after it had been sold by the operation of the sale law. Many Zamindars would not give up rights so easily. As Beveridge puts it, "The Bengali holds on to his land with a persistence which reminds one of the Athenian soldier who grasped the Persian ship with his right hand and who, when

that hand was cut off, seized it with his left, and when that too was lopped away to it with his teeth." The sale law thus became one of the causes of the multiplication of under-tenures. Nearly all the Zamindars and talukdars also possessed subordinate rights in their estates. Many estates were held jointly. So there was an intricate system of debits and credits. The patni system with all its ramifications and the multiplication of under-tenures made land tenure much more complex than it ever had been.'[57]

Obviously these under-tenureholders were petty and small sometimes as poor as their tenants. The following table will show the meagre income and the smallness of these tenure-holders :

Average Number of cultivators per rent-receiver[58]

Tippera	:	52
Bogra	:	51
Mymensingh	:	40
Noakhali	:	25
Backerganj	:	24
Pabna	:	24
Dacca	:	21
Faridpur	:	14

The Backerganj Report[59] outlined a vivid picture of subinfeudation developed within a century of permanent settlement. The owners of as many as twenty layers of intermediate interests called tenureholders belonging mostly to the *Bhadralok* class received rent from the persons immediately below them in the ladder of tenures and paid rent to those immediately above them, retaining a small share for themselves. The cultivators at the bottom usually paid rent to some petty tenureholders, but frequently they had to pay a portion of the rent to each of a number of petty tenure-holders. The owners of the various tenureholders were generally not single persons, but groups of partners, who originally belonged to the same family, but among whom new purchasers were also frequently included. Most of the

tenureholders stayed away from the villages in which their tenures were situated, and many of them possessed a number of tenures in different estates. Once every year they went personally or sent their agents to the villages to collect rent, but in no other respect did they show any interest in the production process. In the Backerganj district, in an average area 100 acres, 64 were occupied by the raiyats and under-raiyats, 9 by the proprietors, and 27 by the intermediate tenureholders, and of the 64 acres occupied by the raiyats, only 15 were held directly of the proprietor, and 49 were held of the intermediate tenureholders.

It must be mentioned here that some of the notable economists have pointed out that the exceptional fertility of the soil of the Bengal delta leading to large surplus over and above cost of production should be considered as one of the potent causes of sprawling infeudation. There was much to share and the large volume of surplus over and above cost of production was more or less evenly distributed among the various tenureholders. Prof Panandikar categorically expressed his doubts whether such subinfeudation could wholly be prevented from coming into existence in such a very fertile tract as the delta. According to him this economic situation was responsible for the creation of such a class.[60] In comparatively barren tracts, such as hilly parts of Central India and the rocky Valleys at the foot of the Himalayas, it was difficult for the landlord class to come into existence because the produce of even fairly large holdings varying from 10 to 15 acres was barely sufficient to enable the cultivators to live and to pay a very low land revenue, and because no surplus was available for the maintenance of a landlord class. This was especially true when the cultivated land was scattered among uncultivable wastes because then no landlord could find the task of managing his scattered estate and collecting very low rents, personally or through agents, paying enough. But in the very fertile parts, layers of landlord class could gradually emerge, although the proprietory rights were at first granted to the cultivators at a low revenue demand.

According to him subinfeudation might also arise in another way. The soil being fertile, the land already in the possession of cultivators could be made to yield more by the application of more labour and capital to it, and the cultivators were aware of this. The professional money lenders took advantage of this fact, and lent them money at a high rate of interest on the mortgage of their holdings. Many of these loans could not be repaid and then the money-lenders foreclosed on the mortgages, the land passed away into their hands and they became tenureholders. If the law prevented the acquisition of such proprietorship on the part of the professional money lenders, their place was taken by some individuals belonging to the agricultural class and the ultimate result was the same. These tendencies were also noticeable in those parts of the raiyatwari tracts and canal colonies in India, in which the land was sufficiently fertile.

This natural-geographical explanation of sub-infeudation, however, cannot be the whole truth. There is no doubt that fertility and climate in Bengal generated relatively a larger surplus. In that one can agree as Prof Pavlov has done with I.M. Reusner[61] who expressed : 'The balance between the necessary product, which went to reproduce the labour-power of the peasant his family and his holding, and the surplus-product extracted by the feudal lords was more favourable here for the exploiters than in the natural-geographical environment of a temperate climate. There is no doubt at all that the higher rate of feudal exploitation was an additional source of strength and power of the feudal lords over the peasants (and the emergent bourgeois elements), a fact which helped to maintain the feudal exploitation and hampered the transition to relations of a capitalist order, a fact which fuelled the tendency to stagnation in the feudal societies of the East.'

Panandikar-Reusner thesis can no doubt explain the volume the surplus-product due to fertility of the Bengal delta, but it does not explain why the Zamindars of Bengal themselves did not or could not appropriate the whole of the surplus minus the Government revenue and thus could accumulate large

capital for transforming themselves into capitalist farmers in course of time. With a fixed land-tax and large surplus flowing into their hands this was to be their historical destiny. Dr Panandikar fails to perceive that the high land rent, their punctual and forcible realisation, the resistance by the tenants—all combined against the Zamindars who had to, by pressure of circumstances, infeudate as quickly as possible after the settlement. While the Burdwan Raj and those who subinfudated like him somehow survived the ordeal, the Birbhum Raj for example could not. The muslim Zamindar of Rajnagar, who controlled a large part of Birbhum District, tried, after the acute famine of 1770, to meet the high revenue demands of the Company. Since the famine his peasantry was decimated and lands remained uncultivated. The pressure put on the peasants seemed to be hard enough to generate a peasants' revolt which destroyed the estate, which was sold away in small lots and by the end of the eighteenth century two hundred and thirtythree "new men" replaced the old Zamindar. On the other hand, the high-rent, the laws of punishment for non-payment, and the peasants' resistance were the main factors which led the Zamindar at Burdwan to sub-infeudate, to get rid of the responsibility of direct collection, while being assured of an annuity.

The fruits of the soil over and above mere subsistence allowed to the raiyats were the measure of benefit reaped by the intermediaries. After payment of a portion to the Government as rent the remainder was distributed between various thin layers of subinfeudatories.

The total economic benefit or the amount of income enjoyed by the intermediaries can only be guessed very indirectly. Figures are available for Bengal, Bihar and Orissa as a whole and not separately for each. In 1793 the revenue assessment fixed permanently amounted to 286 lakhs. It represented 90 per cent of the gross rental and Sir John Shore calculated that the Government, the landlord class and the cultivators obtained 45, 15 and 40 per cent of the gross produce of the land. The Zamindars were not to pay any revenue for their *nankar* or

According to him subinfeudation might also arise in another way. The soil being fertile, the land already in the possession of cultivators could be made to yield more by the application of more labour and capital to it, and the cultivators were aware of this. The professional money lenders took advantage of this fact, and lent them money at a high rate of interest on the mortgage of their holdings. Many of these loans could not be repaid and then the money-lenders foreclosed on the mortgages, the land passed away into their hands and they became tenureholders. If the law prevented the acquisition of such proprietorship on the part of the professional money lenders, their place was taken by some individuals belonging to the agricultural class and the ultimate result was the same. These tendencies were also noticeable in those parts of the raiyatwari tracts and canal colonies in India, in which the land was sufficiently fertile.

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nijjote lands. They were also permitted to retain the whole of the *Sayer* imposts and the yield from all invalid grants under 100 bighas, which they were allowed to resume. Sometimes they could conceal assets and so escaped assessment. As population increased, as wastelands were reclaimed, as cultivation extended, as the value of agricultural produce increased on account of the improvement in the means of communication and the opening of markets, and as the purchasing power of money fell, the rent-roll of the Zamindars went on increasing until it rose in the permanently settled estates from *318* lakhs in 1791 to *1472* lakhs in 1904.[62] The land revenue, however, rose during this period from Rs 286 to Rs 323 lakhs only. This increase was the result of the resumption and assessment of a number of estates, which at the time of the Permanent Settlement had been held revenue-free under invalid titles, and the right to resumption which had been retained by Regulation I of 1793, and not of any increase in the assessment of those estates which had been already permanently settled. Thus the Government share of the rental fell from 90 to 24 per cent. Deducting 10 per cent for the cost of collecting the rent, the net rental increased by Rs 1039 lakhs. And the landlords without investing this income as capital, went on subinfeudating. As Baden Powell observed, 'They (landlords) did nothing for the land, and even when there was no glaring personal defect, the climate and habits of the country unfortunately suggested that the proprietor should save himself the trouble by farming out his estate to any one who would give him the largest profit over and above his revenue payment. And as the proprietor's farmer in time grew rich.....so he too farmed out his interest to others till farm within farm became the order of the day, each resembling a screw upon a screw, the last coming down on the tenant with the pressure of them all.'[63]

In a recent research on Dhanbad,[64] a neighbouring district of Burdwan, situated in the State of Bihar, the extent of subinfeudation as per settlement of 1918-1925 has been somewhat detailed out. The study shows that, 'out of 1,337 villages in the district as a whole, only one hundred and sixty are entire

villages (12·04 per cent) were under the direct control of Zamindars where no intermediary rights were created; seven hundred and seventy one villages (57·67 per cent) were under the control of only the tenureholders to whom the Zamindars had transferred their proprietory raiyats; and four hundred and five villages (30·29 per cent) were partly under the control of the Zamindars and partly under the control of the tenure holders'.

As for the distribution of total land between seven Zamindars and the tenureholders of the district, it was shown 'that 67.56 per cent of the total area of the district was under the exclusive control of the tenureholders, and the Zamindars retained their exclusive control over only one-third. that is 32·44 per cent, of its area. The entire area of the Jainagar estate was under the control of tenureholders as all the villages of this estate had passed into their hands in entirety. Among the estates partly under the control of the Zamindars and partly under the control of the tenureholders, the Pandra estate had the highest percentage (84·97) of its land under the control of tenureholders, as in the case of number of its villages. The Tundi estate stood second with 75·90 per cent of its area under the control of the tenureholders. The estates of Nawagarh, Jharia and Katras, having mainly coal-bearing lands, had 57·64, 55·35 and 49·80 per cent respectively, of their total area under the control of the tenureholders.'

Distribution of land between the Zamindars and Tenure holders in Different Estates of the Dhanbad District as per Settlement (1918-1925).

Name of the estate	Under the control of the Zamindars	Under the control of the Tenure-holders	Total Area
(1)	(2)	(3)	(4)
1. Jainagar	0.00	19,536·18 (100.00)	19,536·18
2. Jharia	57,015·60 (44·65)	70,687·59 (55·35)	127,703·19
3. Katras	23,051·63 (50·20)	22,872·36 (49·80)	45,923·99
4. Nawagarh	23,803·90 (42·33)	32,384·15 (57·64)	56,188·05
5. Nagarkiari	16,873·79 (53·97)	14,390·33 (46·06)	31,264·12
6. Pandra	18,610·66 (15.03)	105,238·44 (84.97)	123,849·10
7. Tundi	23,501·42 (24·10)	74,007·29 (75·90)	97,508·71
District : Total :	162,857·02 (32·44)	339,116·34 (67·56)	501,973·36

'This leads to the conclusion that though the land of the whole district was settled permanently with the Zamindars, they retained their control on a small portion of it and created, for reasons already given, a variety of tenureholders who exercised full control over the land given to them by the Zamindars. The data collected about sub-infeudation.....show that the tenureholders created, very often, sub-tenureholders under them on almost the same conditions, on which they had obtained their tenures from the Zamindars. Again the same data show that it was not uncommon for sub-tenureholders to create sub-sub-tenureholders in the same way in which they held land from the tenureholders with the result that there was created a chain of intermediaries between the actual cultivators and the Zamindars. At the time of survey and settlement

operations during 1918-1925, there were 5997 tenureholders and sub-tenureholders of various descriptions in the district.'

It is seen[65] that there were as many as sixteen types of tenureholders such as (1) Brahmottar (numbering 1,796); (2) Debottar & Shibottar (514); (3) Khorposh (221); (4) Lakhiraj (136); (5) Mukarari (1011); (6) Dar-Mukarari (118); (7) Patni (41); (8) Dar-Patni (28); Mohatran (123); (10) Maljagir (30); (11) Madhyasatwa (940); (12) Jamaisatwa (198); (13) Ijara (428); (14) Khuntkatti and Pradhani (76); (15) Nayabadi (146); (16) Mortgages (191).

The research paper, however, did not delve deep into the causes of such subinfeudation. According to D. O. Wadhwa, the main cause of leasing out large areas of land was Zamindari debt. 'As the Zamindars were indulging in extravagant habits, the finances of their estates were reduced to such straits that they could not even meet their liabilities on account of taxes except with great difficulty by borrowing money. The loans were like halters round the necks of the Zamindars and with the halters they could not survive long unless they parted with their Zamindari rights permanently in some of the villages which brought them huge sums of money at a time.'

Without mentioning the high revenue imposed by the Company, the resistance from the peasants to pay rent and the extraordinary punctuality and regularity of payment imposed on the Zamindars one cannot explain why the Zamindars 'indulged in the debts'. Aristocratic debts in India were mainly the effect of fiscal pressure and raiyats' resistance and was not due to 'extravagance' in general.

Debts incurred by the landed aristocracy were not confined to India alone, it was prevailing in all countries. While in some other countries like England the debts were gradually liquidated, in India the revenue policy and the peasants' resistance did not leave much surplus from which those debts could be repaid. A short discussion on aristocratic debts of England made by Prof. David Spring as also by Prof. F. M. L. Thompson would reveal the situational difference between England and India in this respect.

In several articles Prof. David Spring[66] drew attention to the "widespread financial embarrasment", the "heavy indebtedness", which he believed was "often to be found among the older landed families" in the first half of the nineteenth century, resulting from heavy and accumulated family charge, electoral extravagance, the expense of house-building and the high living of the Regency period. But, he agreed that, by Mid-victorian times, the aristocracy—who by now combined "abstinence and thrift mixed with Evangelical earnestness"—had become more restrained, more sober, and more aware of their obligations. Gambling, housebuilding and excessive spending on high politics were curtailed or reduced and retrenchment or recovery were successfully accomplished : the spendthrifts of one era were replaced by a "generation more careful about how its money was spent, and more informed about how it was earned". One major consequence of this awakened sense of responsibility was that many aristocrats sought to exploit the non-agricultural resources of their estates, so as to augment income and reduce encumbrances, a process which might, in the short run, actually serve to increase indebtedness before the golden harvest of dividends, urban rentals, speculative land prices, mineral royalties, or market dues was garnered. Thus the threat of "imminent disaster" was averted. By 1880, "many of the big estates saw their encumbrances fall markedly away". Revived, retrenched and restored, the aristocracy enjoyed a new and prolonged lease of life.

This somewhat melodramatic view was contested by Prof. F. M. L. Thompson[67] who while admitting that "some debt... was characteristic of great estates", questioned whether it was overwhelming in its weight or mortal in its consequences, 'Debts'...' he noted, 'require careful handling as evidence : they may as easily indicated increasing prosperity as increasing adversity, intelligent use of available resources as wayward appropriation". Pointing out how few peers actually went bankrupt, he felt it to be "extremely doubtful whether ruinous indebtedness was ripe amongst the landed aristocracy of early

victorian England". On the contrary, he argued that a high level of debt could be and often was sustained by aristocratic families over a long period of time, and the crucial issue was not the absolute size of encumbrances but the amount of annual income which was appropriated for their servicing. Only when 'interest charges equalled and even exceeded disposable income' did 'indebtedness become disastrous', a relatively infrequent occurence. Moreover, his examination of the affairs of the Ailesbury trust suggested that even when a family was in debt, it did not automatically follow that attempts would be made to develop non-agricultural resources.

Debt was a constant feature of life for the early modern aristocracy, the only means by which expenditure and income, both of which fluctuated, but rarely together, could be reconciled. Indeed Prof. Stone has shown[68] that it was between the years 1580 and 1610 that 'the nobility first became heavily dependent on credit', and has estimated that by 1641 the total indebtedness of the peerage amounted to approximately £ 1.5 million.

Accordingly it seems probable that for most early nineteenth century landed families, from the Salisburys, Seftons & Myddletons at the extreme to the gentry of Merioneth, Pembrokeshire, and Essex at the other, some degree of indebtedness was a familiar condition, either for themselves, their immediate ancestors, their relatives or their friends.[69]

And recent research suggests that this continued to be the case throughout the nineteenth century, not just for the first fifty years or so. Assuredly, at one extreme, a few families, buoyed up with extensive non-agricultural sources of revenue, managed to avoid long term mortgages altogether. Thus, despite extensive and protracted expenditure on house, land and industrial undertakings, families such as Dudleys, Sutherlands and Northumberlands were only obliged to resort to occasional short term mortgages or bridging loans from their bankers when spending temporarily outran income.

Debts of Indian landed gentry, however, stood on quite a different footing, its nature, causes, sources and modes of

repayment were qualitatively different from that of the then contemporary England. That such loans were not the root cause of the subinfeudation in India but were results of high land tax will be revealed by a study of the conditions which compelled the Burdwan Raj to go for this new system of revenue farming and this is going to be dealt with in the following chapter.

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CHAPTER II

RAJ AND THE PATNI

Regulations earlier to that of Permanent Settlement in 1793 prohibited the Zamindars of estates from "disposing of any dependent taluk to be held at the same or at any *jumma* for a term exceeding ten years."[1] Leases for any term exceeding ten years were declared "null and void". This prohibition was repeated in 1795 and 1803, and it was declared that on sale for arrears of Government revenue, all such leases would stand cancelled.[2]

Within a very short period of only nine years, the policy had to be reversed. In 1812, it was deemed advisable to change the policy. The Zamindars were declared competent to grant leases to dependent talukdars on any terms most convenient to the parties.[3] Lease was allowed even in perpetuity, and reserving any amount of rent, provided the interests the Zamindars had in their estate authorised them to make such grants. In 1819, all such leases, granted either before or after 1812 were declared legally valid, notwithstanding that the rules in force, before the enactment of Regulation V of 1812 had prohibited creation of such intermediary tenures.

Variations in the patterns of taluks evolved by the Zamindars since Permanent Settlement arose from the terms of the grants which regulated the relations between the lessors and the lessees. Most of them were, permanent, hereditary, alienable and with rent fixed forever. Some were however permanent, hereditary, alienable, but rent was not fixed forever. Some were again permanent and with fixed rent but not heritable and/or alienable. Some taluks were held without written leases and custom or usage regulated their terms of tenureship.

A good many of these were known as *Patni taluks,* and a few went by other names. These Patni taluks had their origin in the estates of the Maharaja of Burdwan.[4] It has been said

that the estates of the Maharaja of Burdwan were saved by the creation of these *patni taluks,* as the system afforded the only means of escape from the ruin of the ancient families in Bengal brought about by the Permanent Settlement. The assessment of land-revenue on the estates settled with the Burdwan Raj was very high. For easy and punctual realisation of rent the Raja had to subinfeudate. Leases to middle-men in perpetuity and at fixed rent were granted to a large number of intermediaries, who were thus made proprietors in the same way as the government had made Maharaja of Burdwan a proprietor. Regulation of VIII of 1819 placed on a legislative basis this system of subinfeudation.

The Preamble to Regulation VIII of 1819 not only clearly stated that such taluks were conceived and executed by the Raja of Burdwan, it also outlined the nature and character of such taluks.

..."These tenures have usually been denominated *patni* taluks, and it has been a common practice of the holders of them to underlet on precisely similar terms to other persons, who on taking such leases went by the name of *darpatni* talukdars : these again sometimes similarly underlet to *sepatnidars* ; and the conditions of all the title deeds vary in nothing material by the first holder..."

The Preamble further points out, "The tenures in question have extended through several zillas of Bengal, and the mischiefs which have arisen from the want of a consistent rule of action for the guidance of the courts of civil judicature in regard to them have been productive of such confusion as to demand the interference of the Legislature. It has accordingly been deemed necessary to regulate and define the nature of property given and acquired on the creation of a patni taluk as above described, also to declare the legality of the practice of underletting in the manner in which it has been exercised by patnidars and others, establishing at the same time such provisions as have appeared calculated to protect the under-lessee from any collusion of his immediate superior with the Zamindar or other for his ruin as well as to secure the just rights of the

Zamindar on the sale of any tenure under the stipulations of the original engagements entered into with him."

What, then, were the historical compulsions which led the Maharaja of Burdwan to evolve such a system of subinfeudation, inspite of legal prohibition ? This requires a short journey in to the history of Burdwan Raj. For ages before the British conquest of Bengal, Burdwan enjoyed a traditional reputation for prosperity.[5] But, "this prosperity was to last only till 1742 when the Maratha raided Bengal."[6] For a time during the first invasion the district actually became the very cockpit of harassing skirmishes between the raiders and the Bengal army. The marches, and counter-marches of Alivardi's troops and the lightning attacks of Bhaskar Pandits' cavalry (*bargis*) reduced the district to ruins. The loss of lives and resources which the Maratha raiders brought upon Burdwan and the neighbouring district has been recorded in the writings of several Persian and Bengali authors of the eighteenth Century ; Ghulam Hussain Salim, for instance, describes how at one stage the Marathas "set fire to granaries and spared no vestige of fertility, and when the stores and Granaries of Burdwan were exhausted, and the supply of imported grains was also completely cut off, to avert death by starvation, human beings ate plantain-roots, whilst animals were fed with the leaves of the trees. Even these gradually ceased to be available. For breakfasts and suppers nothing except the dises of the sun and the moon feasted their eyes."[7] Two Bengali writers, Vaneshwar Vidyalankar, the court-pandit of the Burdwan Raj, and Gangaram, the poet of Maharashtra-Puran[8] both have left eye-witness accounts of mass-exodus of panic-stricken people, of the burning down of deserted hamlets all along the Bhagirathi, the senseless massacre of women and children among parties of villagers ambushed on their way of escape by Maratha horsemen, the plunder of gold and silver and the cynical torture perpetrated by the *bargis* on those who had no means with which to satisfy their savage demand, "Give us rupees, give us rupees."

Gangaram's description of the plight of villagers of all ranks

and occupation was highly candid : "As the bargis plundered the villages," says the poet, "villagers fled en masse : The Brahmin pandits with their books, goldsmiths with weights and measures, grocers with their goods, brass-smiths with copper and brass, blacksmiths with their implements and potters with their wheels ; fishermen fled with their nets and ropes, and conchshell dealers with their saws...and peasants and Kaivartas fled loding their oxen with ploughs and paddy seeds."

The consequences of a village community falling to pieces were best described in the words of Holwell, who with a merchant's sense attempted to measure the volume of economic loss suffered by the district of Burdwan. The Marathas, he wrote,[9] "committed the most horried devastation and cruelties : they fed their horses and cattle with mulburry plantations and thereby irreparably injured the silk manufacture...On this event, a general face of ruin succeeded. Many of inhabitants, weavers and husbandmen fled. The Arungs were in a great degree deserted ; the lands untilled...The manufactures of the Arungs received so injurious a blow at this period, that they have ever since lost their original purity and estimation ; and probably will never recover them again...A scarcity of grain in all parts ; the wages of labour greatly enhanced ; trade, foreign and inland, labouring under every disadvantage and oppression."

Before the district could recover from the effects of the plunder by the *Bargis*, the East Indis Company began squeezing it. Since April 1758, the English had been in possession of tankwahs, or assignments of revenue in the districts of the Rajas of Burdwan and Nuddea.[10] Of Tilok Chand, the Burdwan Raja, the Company's servants had some unpleasant experiences in the times before Plassey.[11] Even after the sanad granted by Mir Kasim for the cessation of Burdwan to the Company, the relation did not improve. The circumstances of Raja Tilak Chand at this time must have been those of great distress.[12] Holwell ascribed the Raja's inability to meet the revenue demand and to the shameless way in which he was fleeced by Mir Jafar.[13] The Raja's accounts laid before the

Council computed the loss inflicted by the ravages of the Shahzada's army and the Marathas at Rs. 7,93,080-3-9.[14]

Introduction to the Fifth Report contains in detail the higgling which continued between the Company and the Raja and the immense pressure put on him for the payment of revenue.[15] The limit to exaction was political prudence i.e. fear of revolt by the Raja : "It was the unanimous opinion of the Board that this settlement was far from representing the real value of the Burdwan lands, but they were constrained to be content with it, seeing how many of the Zamindars have taken part with the Shahzada, and how near Burdwan was being persuaded to take the same course."[16] In 1761, the revenue was raised to thirty lakhs, (till then it was twenty eight lakhs), another two and half lakhs were added as expenses for troops. "From March, 1761, may be dated the establishment of an English revenue official at Burdwan," styled as Resident. "...At the beginning of the new reve nue year (1763), Mr. John Johnstone was sent to Burdwan to make a new arrangement with the Raja. The General letter from Bengal of 30th October, shows that this gentleman made a settlement for thirty four lakhs of sicca Rupees..." The Court of Directors in their General Letter of 17th May, 1766 said, "In the province of Burdwan, the Resident and his council took an annual stipend of near Rs. 80,000/- from the Rajah in addition to the Company's salary. This stands on the Burdwan account, and they carried that pernicious principle even to sharing with the Rajah of all he collected beyond the stipulated malguzzary, or land revenue ; overlooking the point of duty to the Company to whom properly everything belonged that was necessary for the Rajah's support." Verelst, on his arrival at Burdwan in August, 1765, made all possible attempts to raise revenue demands on the Rajah. The following is Verelst's statement of the net revenues of Burdwan.

May to April		*Curt. Rs.*
1760-1761	Cash received	6,07,482
1761-1762	,, ,,	38,41,987
1762-1763	,, ,,	39,49,167

May to April		*Curt. Rs.*
1763-1764	Cash received	39,86,101
1764-1765	,, ,,	36,29,789
1765-1766	,, ,,	35,67,854
1766-1767	,, ,,	42,88,171
1767-1768	,, ,,	41,49,471
1768-1769	,, ,,	39,48,037

Verelst points out that on the first year "only a small part of the revenue was brought into the Treasury", and also "the duties upon salt made within the province, which in former years made a part of revenues, were, after the establishment of the Society in the year 1765, paid into the Treasury of Calcutta."[17]

The district could not recover from such shocks when the famine of 1769-70 again jolted its structure. The draught was so severe that the Governor-General in Council in a letter to to the Court of Directors in November 1769 had to anticipate the grave calamity : "It is with great concern, Gentlemen," they wrote, "that we are to inform you that we have a most melancholy prospect before our eyes of universal distress for want of grain. Owing to an uncommon drought that has prevailed over every part of the country, in so much that the oldest inhabitants never remembered to have known anything like it, and as to threaten a femine."[18] In two month's time the Directors had to be informed that the apprehensions had already proved true.[19]

Hunter's account of the particular severity with which the famine pressed upon the Western districts of Bengal is too well-known to need repetition. Burdwan, no less than Birbhum, suffered from the full measure of its impact. Given her normal share of seasonal rains, Burdwan could be and was easily indeed the most prosperous of Bengal districts and the least liable to famine. But in 1770, over a hundred years before the Eden Canal was even conceived of, it was yet much too defenceless against draught. For its most fertile part, the deltaic region lying between the great rivers was, paradoxically enough, the

most exposed to danger. Here the winter rice crop constituted, until recently, the principal means of subsistence for the people ;[20] and a dry winter, like that of 1769-70, by ruining the crops could easily deprive the peasantry of a whole year's stock. Secondly, cultivation in the central and western parganas of the district depended mainly on artificial irrigation with water drawn from tanks which, as Reza Khan reported had all dried up. Hunter's pithy summary of the proceedings of the council of 20 November, 1769 concerning a petition from the Raja of Burdwan gives a thumb-nail picture of the resulting distress without taking away any of its poignancy.[21]

"Consultation of the 20th November, 1769.—Representation of the Raja of Burdwan. Draught and dearness of Grain. Crop parched and cut up for fodder for the cattle. Tanks dry, water insufficient for the inhabitants. Rubee harvest backward, and without rain will be destroyed. Ryuts deserting in large bodies."

Inspite of this distress and depopulation the rulers ensured rise in revenue receipts. We have on record Warren Hastings' staggering confession[22] that the net collections of 1771-2, that is the term immediately following "the year of the Famine and Mortality" exceeded even those of 1768-9, the year before the draught which caused the famine. The Company justified the excess of revenue as a partial compensation for the losses sustained by the Government in the two years of draught and famine from 1769 to 1771. At the cost of what great human suffering the revenue mechanism continued turning its usual rounds can best be described in the words of Warren Hastings himself.

"It was naturally to be expected", he wrote, "that the diminution of the Revenue should have kept an equal pace with the other consequences of so great a calamity. That it did not, was owing to its being violently kept upto its former standard. To ascertain all the means by which this was effected will not be easy.....One tax, however, we will endeavour to describe, as it may serve to account for the equality which has been preserved in the past collections, and to which it has principally

contributed. It is called *Najay*, and it is an Assesment upon the actual inhabitants of every inferior description of the Lands, to make up for the loss sustained in the Rents of their neighbours who are either dead or have fled the country. This tax, though equally impolitic in its institution and oppressive in the mode of exacting it, was authorised by the ancient and general usage of the country. It had not the sanction of Government, but took place as a matter of course...However irreconciliable to strict Justice, it afforded a preparation to the state for occasional deficiencies ; it was a kind of security against desertion, by making the inhabitants thus mutually responsible for each other ; and precluded the inferior collector from availing himself of the pretext of waste or deserted lands to withhold any part of his collections. But the same practice which at another time and under different circumstances would have been beneficial, became at this period an insupportable Burthen upon the inhabitants. The tax not being levied by any Fixed Rate or standard, fell heaviest upon the wretched survivors of those villages which had suffered the greatest depopulation, and were of course the most entitled to the lenity of Government. It had also the additional evil attending it, in common with every other variation from the regular practice, that it afforded an opportunity to the farmers and shicdars to levy other contributions on the people under colour of it, and even to increase this to whatever magnitude they pleased, since they were in course of the judges of the Loss sustained and of the proportion which the inhabitants were to pay to replace it."[23]

Burdwan suffered like any other of district from Reza Khan's ruthless squeeze. The half-hearted grant of remission in response to the Raja's plaintive appeals amounted, in the last count, to less than a lakh of rupees[24] and in a letter to the authorities Raja Tejchand wrote on 14th May, 1771, that the revenues were paid up without balance "inspite of the hardships and distresses that have befallen the ryots, the poor and the inhabitants of this country from the famine."[25] In such a year of famine the company raised from this district the highest

amout of revenue since 1760—a net collection of Rs. 40,57,432/-. The inevitable result of this policy of maximum exaction was a chronic depletion of the resources of the district which, as Hunter says, had been "the first to cry out and the last to which plenty returned." The conclusion seems to be obvious that "Burdwan did not fully recover from the effects of famine until the beginning of the last century."[26] The reason was very clear and "it could not have been otherwise, for in the period immediately following the famine the district, far from being nursed back to its natural health was exploited systematically and without respite." This is shown from the following table.[27]

Statement of Revenue Demands and Collections in Burdwan from 1772-73 to 1783-84.

Year	*Gross*	*Jamma*		*Net collection*		
	Rs.	As.	G	Rs.	As.	G.
1772-3	41,84,867	9	17	39,52,568	13	19
1773-4	39,17,929	4	11	38,80,494	6	5
1774-5	39,35,784	4	11	40,02,401	10	0
1775-6	39,67,900	4	11	39,98,471	0	0
1776-7	39,98,062	4	11	39,07,220	1	4
1777-8	39,07,220	4	11	39,07,220	1	4
1778-9	39,58,427	1	4	40,80,958	1	4
1779-80	41,05,958	1	4	38,23,560	15	12
1780-1	39,66,120	0	10	38,58,252	0	0
1781-2	39,66,120	0	0	41,74,524	8	6
1782-3	43,58,026	15	0	42,92,790	15	19
1783-4	43,58,026	15	0	42,89,172	3	14

While most of the ancient Zamindari houses suffered a swift decline in fortune due to the pressure of revenue demands by the Company, the Burdwan Raj stood the test well enough to come down to our days with a relatively uninterrupted tradition of economic prosperity. But this was not achieved without conflict. Like those of other Zamindars the Burdwan Raj was also driven from pillar to post and dragged through

the usual procedure of humilation and house arrest, of mortgage, sale and attachment of properties. With some degree of resilience the Raj family could change over from the old Zamindari system to the new order of Cornwallis with only some cuts and scratches.

The difficulties of the Zamindari of Burdwan which started from the days of the *Bargis* and of Plassey intensified much more after the death of Raja Tilakchand. The palace intrigues by selfish courtiers around infant Raja Tejchand were so acute that the wise and capable mother Bishnukumari could never find any suitable opportunity to train up her son. The climate of intrigues and aggrandisement prevailing at that time directly fostered by Nabakrishna and Gangagobinda Singh, and the estrangement between the mother and son are revealed in the long letter sent by the mother to the Presidency in 1787.[28]

"The Governor General and Council honored Maha Raja Deraje Tejchund Behadre his successor and myself conformally to the petition. Mr. Hastings became after this Governor General.

"Bridge Kishore Roy and Prawn Kishore Metre my servants ungratefully plundered and destroyed my house and the Raje and on the account Maha Raja, being about four years of age and me a helpless woman I considered even the saving of my life a great chance. Sometime after this General Clavering and other Gentlemen arrived from Europe and I having in consequence of the ingratitude of my former servants appointed others, entered my complaint, conformably to which the Gentlemen having made enquiries, their ingratiude was proved and they being dismissed the Gentlemen ordered me to take the charge of transmitting the Company's Revenue and of the education of Maharaja myself, conformably to which orders I applied myself to transmitting the revenue and to the Education of the Raja—General Clavering and Colonel Monson died after this and my ungrateful servants obtained access to Mr. Hastings by collusion, and according to their representations Mr. Hastings giving these Ingrates the charge and direction sent them to Burdwan...after the death of Bridge Kishore

Roy and Prawn Kishore Metre, son of the said Roy, and Juggutnarain brother of the said Metre appearing both before the Governor General procured from various ill counsels the appointment of sezawul for Raja Nobkrissen and took him with them to Burdwan, from having this my son and myself departed for Calcutta and Mr. Ducarell taking a hundred sepoys with him took away the Rajah by force from me at a place called Bass bareah and carried him to Burdwan, placing fifty sepoys as a Guard (to be defrayed at my charge) on myself, seeing myself oppressed in this Degree, and not allowed to me my son who is dearer to me than life, or soul, I returned to Burdwan with the sepoys ; at my return they kept the Raja separated from me and Mr. Ducarell sent me forcibly to a place called Ambooah. After sometime I said to this Gentleman that as my son was yet a child, and dearer to me than life, or fortune how could I possibly leave him, and the Raja, Mr. Ducarell answered that he had no remedy that it was the Governor's order—Being at Ambooah the Harcarrah Mootyram and others so beset every side of my Home that it was not possible even for an Ant to escape ; I had no notice of my son's situation nor had he of mine—In this manner a space of four year elapsed and I was even (during that time) destitute of food or clothing. After this my ungrateful servants joining themselves to others, fraudulently took the Maha Rajah with them to Calcutta and from their bad counsel giving him no other place to stay in they carried him to live at Raja Nobokissen's and had him there at their option. The Maha Raja went afterwards to pay his respects to Mr. Hastings and represented that his life was nearly at an end from the various distress he had undergone—That Mr. Hastings should excuse him ; and re-appoint his mother. The Governor General answered that he should that Day return to his House and what he requested should be granted my ungrateful servants then instigated the Maha Raja on various manners though he did not attend to their instigations and they placing Nucco. Dutt, Deachund, Nilcannt, Kereck the son of Bedabund and others near 40 or 50 Debau-

ched people with the Raja told them to exert themselves in such manner as to make the Raja forget even his mother's name, the Raja was at that time 14 years of age when these Debauched people fraudulently urging him on with an evil intention took him away to Burdwan where they initiated him in such evil ways that he had no concern left for either House, life of country and the confidently did whatever they liked—Mr. Hastings hearing this sent for these abandoned people.—The Maha Raja then wrote that he would not again act in such a manner, and that these abandoned people should not have any access to him, but these very people afterwards instigated him to such a Degree in evil ways, that it is beyond the power of expression.—His life in all that remains to him at the time of my being beset on every side in my house by Mooty Ram : the Hircarrah, a sister of the Rajas was with me who died from the strictness of the confinement. Hearing this the Maha-Rajah came to me and withdrew the guard which uncompassed me on every side. Mr. Hastings after this departed for Europe and Mr. Macpherson became Governor General and having presented an Arzee to him was sent for the presence.—Having conformably to these orders arrived in Calcutta the ungrateful servants evil disposed people brought the Maha Raja through ill advise to Calcutta likewise, and joining him with Gunga Govin Sing caused him to live there and had him at their disposal. It is not in the power of writing to express the ill example they set him."

Though the estrangement which developed into a lifelong hostility between the mother and the son affected the destiny of the Zamindari rather seriously, yet the root of all difficulties lay much deeper than the question of estate management. It is seen that the crisis of the Zamindari continued to exist even when Dayachand was no more and the Rani took over the management from his son soon after the Permanent Settlement. 'Burdwan like the rest of Bengal suffered from an organic maladjustment which arose from the simple fact that the East India Company's fiscal policy was incompatible with the old

Zamindari system. It was Company's policy of appropriating an ever larger share of the Zamindari revenue which involved the Raja and his mother in a series of inextricable difficulties.'[29]

Burdwan District Gazetteer very rightly observed that, "the chief object of the administration at this time seems to have been to make the Maharaja pay his revenue, and all other considerations were subordinated to this." No remission, no consideration, the revenue must be collected without fail and in time. In 1786, the Maharaja prayed for deduction of Rs. 82,868 on accout of the abolition of the sayer and Rs. 47,000/- on account of losses arising from the construction of Rankin's military road across "lands yielding the finest crops." The collector, J. Kinlock, considered these as "just grounds", but the Board summarily rejected the plea.[30] It continued to press for the amount of revenue due to him (Rs. 1,76,462/- in all). The Raja wrote to the collector, "To you, Sir, I have before pointed out the extremity of distress which I have laboured under to effect the payment of my Revenue etc., you are likewise well acquainted with the considerable retrenchments which I have been obliged to make in every branch even of my most necessary household expenses, and of the heavy loss I have submitted to in borrowing of money rather fail in my Engagements with the Company. If you represent this circumstances in a proper manner I make no doubt that the Gentlemen of the Board of Revenue will indulge me, by allowing me to enter into some agreement for the payment of this balance—and I bind myself to you to pay into your hands within ten days the sum of Rs. 76,462-7-9 and for the remaining lack I engage to discharge the whole by three equal instalments in the first three months of the new year's settlement."

The collector totally endorsed the letter and wrote to the Board saying that the Zamindar was truly in distress and that granted the indulgence prayed for, "I can venture to assure them (the Board of Revenue) from the promises he had made me, that he will pay this Balances at the stated periods mentioned in his letter." An extract from the Board's reply

may be cited here as a typical example of the attitude adopted on most occasions of this nature :

"We lose no time informing you that we consider the pleas urged by the Zamindar as totally inadmissible, both with respect to the Balance of the last, and the Revenue of the present year. We, therefore, desire that you immediately call upon him for payment of his Balance ; and should he not have complied with that order 3 days after receipt of this letter, you will then attach such quantity of his private property (beginning with his House and furniture) as may suffice to discharge the amount."[31]

In 1787 the Board struck off from the Zamindar's account of seventy thousand rupees traditionally granted for expenses connected with the collection of revenues (*mazkurat*) and charities.[32] In the same year there were autumn floods followed by a cyclone and it was clear from all accounts, including those from the collector and the commercial Residents, that there would be no winter crop to speak of.[33] "The crops and houses of the Ryots", wrote the Raja, "each were considerably damaged and many people and a quantity of cattle perished...The Ruby or October Crop has three times be sown but to no effect and if the Ryots are prest to pay their Revenues at this period they will leave their Houses and the Company will suffer and heavy Balance of revenue." The Collector also subscribed to this view in his latter to the Board (on 23 November, 1787) in which he put forward :

"As it had been my study to admit of no deviation in the punctual payments of each Kist where I could with propriety enforce it without its being detrimental to the province, I with reluctance now candidly declare that if I enforce the payment of the revenues by harsh Measures, after the calamities that have taken place, without a particular investigation it may have such an Effect upon the provinces as will not again be easily remedied as the misfortunes which have occurred ultimately fall on the Ryots."[34] The Board, however, put no importance to the Collector's report, it was decided that "they cannot admit of a temporary calamity constituting any just

ground of Government's granting remissions on a settled or moderate Jumma, it being under such circumstances incumbent on the Zamindars, and not on Government to Grant such relief as may be wanted to the Ryots" and the Board saw "no necessity for any suspension of the Zamindar's payments."[35]

In 1788 the unpaid balance of revenue accumulated to the amount of over three lakhs of rupees.[36] During the summer of April 1788, the collector, acting on Board's orders, attached the Raja's property and household furniture "having stationed peons over such places as I had reason to believe might contain effects of value, particularly upon his Zenana where I understand it was ever been his custom (agreeable to the practice of the country) to deposit his most valuable effects."[37] And on 1 July, 1788, the paragana Mandalghat was ordered for sale by the Board of Revenue.

The payment of revenues, current or arrears, was made difficult by the failure of the farmers and tenants to pay off their rental dues to the Zamindar. A petition dated 28th May, 1789, from the Rajah to the Board of Revenue may be reproduced in verbatim to clarify the difficulty of the Raj family.[38]

"The Burdwan District has suffered exceedingly by inundations and want of rain which for two years past, have periodically affected it and myself from the losses thereby occasioned, having been obliged to make each year extra-ordinary disbursements of money, have at this time nothing left me. The general complaint from the Mofussil must have confirmed this information. With the accumulated distress besides having collected from the country the very utmost agreeable to the Board's order, I have deprived myself of the common necessaries on life and have raised money on my cloths and household furniture, have paid including the balance of 1194,—41,00,000 and every means is taken to accomplish the payment of which is due by the assistance of providence. The balance for phangun will be discharged in 10 or 12 days but there is no possibility to fulfil the payment of the Kist of Chyte amounting to 165, 973-2 at this time, because having disposed of my household effects I have nothing left and the 4,00,000

that is due me by the farmers cannot at this time be realised. To this effect I previously addressed the presence for permission to pay the Kist of Chyte in Sawun or Bandun but this representation was infavourably received and an order to sell the Zamindary immediately issued. My attention to the Revenue has been indefatigable, so much so, that were my conduct enquired into, I should meet your approbation before any other Zamindar in Bengal but this I do not demand. May it please you that the sale may be deferred and agreeable to my *cabooleat* to the Board from me for the balance of Revenue at three months date running at the interest of 12% per annum which I shall duly pay but should I refuse then sell the Zamindary. You Gentlemen are masters of my life, my fortune and happiness, I know no other protector, it is my hope that this petition may meet your sanction.

(A true translation)
Sd/- C. A. Bruce
Asstt."

Raja's representation was equired into by the Colllector very promptly and it was seen that the non-payment by the tenants happened to be the main reason for Raja's default. Letter from the Collector, L. Mercer to John Shore, President of the Board of Revenue illuminates the tangle in which the Raja was inextricably placed.[39]

"To
John Shore Esqr.,
President & Member of the Board of
Revenue, Fort William.
Sir and Gentlemen,

I have received your Secretary's letter of the 29th instant directing me immediately to acquaint your Board how far I believe the several facts stated by the Rajah in his representation transmitted you in my letter of the 28th instant to be true or otherwise in particular as to balance the Rs. 4,00,000 said to be due from the farmers; the Rajah's distress, his having

raised money on his cloths and his having disposed of his household effect.

I now do myself the honour to transmit a particular statement of the balance due by the farmers to the Rajah from which it appears that the amount still due to his account the Revenue of last year is Sa Rs. 301,576 a great part of which I am afraid, he has but little chance of ever recovering as I understand, the people from whom it is due, are by no means to be considered as responsible men..... I make no doubt of the Rajah's feeling himself greatly distressed at being obliged to disburse what he considers his own money for the payment of the Company's Revenues whilst so much is due from the farmers...."

The helplessness of the Raja in collecting rent from farmers was the main hindrance of regular payment of revenue till the whole Zamindari was let out to Patnidars. In sheer exasperation Raja had to find out trustworthy persons to whom the Zamindari could be leased out. Host of letters were written by the Raja to the Collector and to the Board of Revenue explaining his inability in enforcing payments. In 1793 the Raja again complained that the Sadar Mustajirs or principal farmers defaulted in the payment of two lakhs of Rupees due to him. A letter from the Rajah of Burdwan to the collector further shows that the seeds of Patni were already sown before 1793 and the farming out system by the Raja was not working smoothly :[40]

"I have paid the Kists of the present year to the end of Aughun by the great exertions and by means of Merekants and am constantly employed in providing for the Kist of Poose, But the Jumma of the current year exceeds that of the last by three and half lacks of rupees, it is not therefore possible even allowing that my Mashaira be discharge the whole of my engagements. In addition to this, many of the Suddey Mustanjirs owing to their negligence, have not formed proper settlements and are irregular in their payments so much so, that up to present time there is a balance of two lack due from Netoo Loll, Bussunt Loll, Roguram Mitter, Lolla Dyachund,

Bunnarsy Ghose and Ram Jebraul & Co., and although I do everything in my power to recover the above sum from them, I have no hopes of realizing it and have reason further to apprehend that they will be deficient in the remaining Kists.

"For these last two years I have considerably reduced my expenses, have all this is well known to you Sir. The sums allowed me for Mashaira and establishment have all been appropriated to the revenue of Government and have merely kept sufficient for my necessary expenses, notwithstanding all this is clear, there still will be a deficiency of two lacks of rupees besides further balance may occur at the end of the year.

"Thus situated, it is impossible for me to preserve my honour, or my Zamindary without your kind indulgence, if in-order to realize the revenue of Government my Zamindary should be sold, there will be an alteration in the engagements I have entered into for 10 years and Government will be loser because I have farmed out my Zamindary to Mustanjirs for three, for five, for eight and nine years. They therefore will have reason to complain...."

The then existing laws could not help the Zamindar out of such inextricable knot. While the Government could and usually did enforce payment of revenue by the seizure of both the person and the property of a defaulting Zamindar—it had actually done so in the case of Srinarain Mustafi—Zamindar of Chitua, by putting up to sale his entire property down to the last bigha of land and by virtually condemning him to life imprisonment—what was a Zamindar to do with a farmer who would not pay his rent ? He could, of course, be asked to seek redress at a Diwani Adalat. But that, as everybody knew including the intending defaulter farmers, was a long and arduous process. And moreover this process could be stalled by various means, some of which were as simple as the mere change of the defendants' residence from the area under the jurisdiction of the court concerned. In any case the pace of legal procedure lagged far behind the regularity with which the Government insisted on its revenue payments and the

readiness with which the Government punished the defaulting Zamindars.

The imbalance between the measures which could be used against a defaulting Zamindar and those against a defaulting raiyat and also between the laws in paper and its actual enforcement generated tension and frictions which ended in the breakdown of the old Zamindari mechanism of rent collections. Gradually, the subinfeudation was becoming a necessity both ways to Zamindars for sheer survival and the Company for sheer revenue. The intricate situation was very clearly exposed in the case of the famous Calcutta tycoon Baranasi Ghosh who as *Sadar Mustajir* of pargana Balia.[41] He owed the Raja a total of Rs. 47,643 in arrears of rent for 1792-93, and playing no heed to the Raja's importunities he sat safe in Calcutta away from the jurisdictional reach of the Diwani Adalat of Burdwan. The Collector's letter said that unless Baranasi Ghosh was brought to book, it would merely encourage other defaulters to withhold payment of rent to the Zamindar. The Collector trully sympathised with the Raja.[42] "The Raja of Burdwan informs me now that his demand against Banaressy Ghosh... ...and with great reason urges the rule of our Civil Courts as well as the process authorised by Government for the recovery of their own balances as argument to induce you to cause the above mentioned debtors person to be immediately attached and sent to prison unless he satisfies the demand. He is of opinion that by this process he would be more likely to obtain a speedy satisfaction of his claims than by a suit in the Dewanny Adawlut to which Government in its own concerns have determined that the debtors and not the creditor must have recourse in cases where the cause of action in disputable.

"To this argument I must be permitted to add that if the Rajah's Farmers following the example of Banaressey Ghosh find shelter for their persons in Calcutta against immediate enforcement of his claims and are allowed to avail themselves of the delay which is wellknown to attend suits and appeals in the different Adawluts it will be utterly impossible for him to fulfil his engagements to Government with that

punctuality which is expected of him or perhaps to fulfil them at all.

"It seems moreover no more than common justice that you allow the Rajah the same means to recover his balances which you use to recover your own by immediate attachment of the person as well as of the property of the defaulter upon which principle the same success which in a recent instance attended your causing an arrest upon the person of Srinarain Mustofy, would probably follow an arrest of Banarassey Ghosh, Which I therefore trust you will upon further consideration cause to be executed the two cases being perfectly similar. Unless Government and a Zamindar as plaintiffs admit of any distinction which justice ought not to allow of enclosed in transmitted what I conceive to be sufficient grounds for you to proceed upon namely a declaration of the amount in demand authenticated by the Rajah's Seal."

It seems from the communications by the Collector to the Board of Revenue, that he himself got exasperated and urged for the change of the legal procedure.[43]

To quote from a letter on 9 January, 1794, "The difficulty I found in realizing the last Kist of Aughun from the Maharajah induces me to listen to his earnest request of representing to you the hardship he sustains from one of his renters ; who, dwstitute of good faith and availing himself of the delay that necessarily attends the institution of law process for the recovery of arrears of rent, is encouraged to withhold from him his first dues. He begs leave to submit it to your consideration, whether or no it can be possible for him to discharge his engagements to Government, with that punctuality which the Regulations require, unless he be armed with powers as prompt to enforce payment from his renters as Government has been pleased to authorize the use of in regard to its claims on him, and he seems to think it must have proceeded from oversight rather than from any just and avowed principle, that there should be established two methods of judicial process under the same Government the one summary and efficient for the satisfaction of its own claims, the other tardy and uncertain

in regard to the satisfaction of claims due to its subjects more especially in a case like the present, where ability to discharge the one demand necessarily depends on the other demand being previously realized."

Under these circumstances the Board found it difficult to make Raja agree on the terms of Decennial Settlement. The proceedings of the Board of Revenue for 6-27 June and 3 August 1791 contain full details of the negotiation over the Decennial Settlement of the Burdwan Raj. Acute haggling went on between these two parties throughout the summer of 1791. In June that year Tejchand himself came over to Calcutta to conduct the negotiations personally, and at one point when the Board in utter exasperation gave the Raja an ultimatum of twenty four hours to say yes or no to their *doul bandobast* proposal, all hopes of a settlement seemed to have broken down. Bargaining took the first year and on 27th June 1791, a nine years' settlement was eventually concluded.

Settlement was never a relief to the Raja, as the basic problem of high revenue, punctual realisation per force, and farmer's refusal to pay the arrears and the current rental were untouched. Towards the end of the very first year of the new settlement, the Raja petitioned for a suspension of six lakhs of rupees at the rate of two lakhs each for the current year and the next two, promising to pay it up in equal instalments during the last five years of his movennial engagement. Alternatively, the Raja proposed to relinquish[44] his Zamindari altogether in exchange of an annual allowance of Rs. 1,86,000/-.

"I therefore request that I may be allowed a suspension of two lacks on the Revenue of the current year and the same on the years, 1200 and 1201 and that these six lacks of rupees be not demanded of me during that period and I will engage to pay the same at the rate of one lack and twenty thousand rupees on each of the last five years of the term of engagements or from 1202 to 1206 B. S. inclusive. If this indulgence be granted me I cannot entertain a doubt of being able to pay up the Revenue of Government as I shall have time to form proper settlements in the Mofussil, as well as to bring large

tracts of waste land into cultivation and by such indulgence I shall be continued in possession of my Zamindary and no loss will be experienced by Government in the ten years settlement...

"If you should be of opinion that what I have set forth is not founded on fact, and that the Zamindary is capable of yielding the Revenue I have engaged for, and to admit of a profit, I must then state that.....I am willing to relinquish the Farm and to content myself till the expiration thereof, with one lack of rupees for myself, forty eight thousand for the Maha Ranny and thirty eight thousand for the Rannies of Rajah chittersein those sums amounting in all to 1.86,000 per annum. The Government take charge of my Zamindary and the profit and loss in future to rest with them."

In support of this petition by the Raja, the Collector wrote to the Board, only reducing the annuity prayed for to one lakh and suggesting corresponding alterations for the terms of repayment.[45] "I therefore recommend that the Rajah's request for a suspension of six lacks of rupees be complied with in part, that is, that he may be allowed two lacks for the current year, one lack and a half for 1200 and the same for 1201 B.S.....The adoption of the measure will enable the Rajah to ascertain the assets of his extensive Zamindary to bring the waste parts into cultivation and ultimately to form a proper Jumma therefore whereby a considerable increase of assets may reasonably be expected and appears to me to be of the greatest consequence, ascertained. Government will then reap the advantage of having authentic documents to refer to in order to estimate the value of lands when sales become inevitable, property will be more accurately defined, and a powerful check given to the frequency of those vexatious disputes which arise from ambiguous tenures."

The Board's reply was a stern refusal accompanied by censure on the collector for not yet having put the Raja in jail. The Collector readily apolozised and immediately removed the Raja, who was very ill at that time, to "close confinement in the prison. The Collector's letter runs as follows[46] : "The censure you have been pleased to pass on

my conduct for having not confined the Rajah sooner has given me multifarious shocks and the allegation which you ascribe to me was not intentional but proceeded entirely from a misconstruction of the orders of the Governor General in Council communicated to your Board by Mr. Barlow in his letter to your Secretary under date the 15th March, in answer to your reference of the Burdwan Rajah's petition transmitted in my letter of 28th February wherein the Governor General directs that the Rajah be acquainted that in the event of his omitting in pay up the arrears now due from him or failing in the discharge of his future kists in sale of the whole or such portion of his land as may be necessary to make good the deficiency will positively take place of recovering the arrears, I did not conceive it was the intention of Government to imprison the Rajah.

"When I despatched my last Towzee account wherein so heavy in balance appeared, the Rajah was then in confinement under Mofussil and it was reported to me at the same time, that he laboured under such a severe indisposition that it made me apprehend the most dangerous consequences if his person had been removed in that diseased state to the common prison.

"I have now the pleasure to acquaint you that the Rajah was yesterday put into close confinement in the prison, and I am suing every practicable means to ascertain the assets of such lands as I propose recommending for sale if the Rajah do not pay his arrears of Revenue.

"I also beg leave to inform you that the Rajah previous to his removal to prison, represented to me that he laboured under a severe indisposition, but as I considered your orders peremptory as to his imprisonment, I informed him that I could afford him no relief."

Just after a week the collector reported[47] that in spite of confinement in prison and still further deterioration of health the Raja could not pay off the Revenue, "I am sorry to inform you that the Rajah although still in close confinement has only paid into the Treasury the sum of Rs. 14,500/- and

he appears to me be determined to persevere in protracting the payment of his arrears as long as he possibly can, I have used every exertion in my power to induce him to complete his engagements but hitherto without effect..."

According to the Collector, the only way left to the Government was, therefore to realise the arrears "either from the prompt payment at the time of sale or from the absolute disposal of his lands."[49]

Not only the Raja, but the Board of Revenue was also in predicament. Without developing an elaborate machinery of collection of rents from the Raiyats, Raja has already started farming out the Zamindari in intermediate leaseholders. Subinfeudation put difficulties on proper evaluation of landvalues either during outright sale or auctioneering, Zamindar's receipts also did not bear any relation to the rentals paid by actual raiyats. Thus not only the knowledge about the land was circumscribed, the Government found it difficult also to sale land at "proper value". Older the lease, more difficult they were to sale. The Collector in his letter dated 13th May states that,[50] "The Rajah in his petition transmitted in my letter of the 28th February last appirzed you of his Zamindary being farmed out in leases of 3, 5, 8 and 9 years. In the formation of the present Hoodabundy I have selected those Pergunnahs, the leases of which expose the soonest as the least objectionable for sale, but I am apprehensive that the predicament in which even these lands are the leases being unexpired may deter persons from offering their full value; for the purchasers must buy them subject to the terms of the existing leases which I conclude cannot be set aside. I beg leave to press this and the following circumstances of observations of your attention, as I conceive them material for your consideration previous to your issuing the advertizement for the sale of the lands." The issue was again raised in a long-apprehensive letter on 8th June[51]: "You desire first to know whether it has been ascertained as required by the Governor General in Council that the public assessment fixed for the land to be sold, bears the same proportion

to their actual produce as the Jumma payable from the portion of the estate remaining in the possession of the Zamindar bears to the actual produce of the latters to which I beg leave to answer that the actual produce of the whole or any part of the Rajah's Zamindary being unknown, the Hoodah assesments cannot be supposed to have been estimated by the rule proposed in the above quotation of the Governor General's orders...The Rahah's whole Zamindary is let in farm to persons termed Sudder Mustagers, of farmers holding their leases immediately from the Zamindar. The Sudder Mustagers have parcelled out the greatest part, but not the whole of their farms to under renters called Kutkenadars. Some of whom have again subdivided the lands they hold, among yet smaller farms so that there are in some instance, a gradation of four persons between Settlement deed, the Raiyats though in general it intends only to one Kutkenadar and in some cases the Sudder Mustager collects parts of his rents from the Raiyats himself."

"This being the manner in which Rajah had settled his Zamindary and it being at the same time impossible to discover what was the actual produce of the whole or any part of it under the Public Regulation,..."

The difficulties arose out of a lack of correspondence between the revenue demands of the Government and the Zamindar's power to enforce the payment of rent. Field noted that just after the permanent settlement regulations were enacted, thirty thousand cases came up in the Diwani Adalat, all concerning rent reduction, non-payment and instalments.[52]

In these circumstances in October 1793 the Raja himself came out with a proposal to sell off half of his entire estate to his mother Rani Bishnukumari. By the end of the year he was forced to borrow two lakhs of rupees from the merchants in order to clear the winter instalment of revenue. Added to what he already owed to Nimu Mallik of Calcutta, his personal debt amounted in all to Rs. 6,75,000/-. At the same time, by January 1794 the balance of revenue due to

him had piled up to a big total of Rs. 6,99,602/-. On 27th January, 1794, the Collector asked the Magistrate of Burdwan "to receive in your custody and commit to close confinement Maharaja Tezchand, Zamindar of Burdwan," only to discover the very next day that the latter had in the meantime executed a deed of sale of the entire Zamindari in favour of his mother. When the sale was formally approved, the Raja was released after a week's confinement.[53]

The Rani's term of Zamindari began with a mortgage. Within two months of the transfer of the estate, she addressed a letter for a sanction to mortgage her entire Zamindary to Joseph Barrett of Sooksagur for securing a loan of six lakhs of rupees with which she proposed to pay off the revenue arrears which had developed on her. Her petition ran as follows[54] :

"In the Khass collection of Burdwan under Mr. Mercer in 1197 B.S. there was incurred a balance of five or six lacks of rupees and under the Maha Rajah's administration of the same district the deficiency of assets have amounted to near ten lacks of rupees. Observing and maturely considering these circumstances I was inclined to undertake the management myself with a view of preserving the Zamindary in my family as already has been explained but owing to jealous and knavery have disabled from paying up the balance as I formerly promised and greatly concerned and mortified at this failure in the performance of my engagement. Seeing no probability of a remedy by other means I have been constrained to apply to Merchants to raise a loan and have obtained Mr. Joseph Barretto's consent to the following proposals.

"That the Zamindary be mortgaged (for the sum he may advance to me) and remain in his possession until the debt be liquidated. That my Zamindary Aumlah shall act in concert with his servants for the purposes of collecting the rents and satisfying the demands both of Government and of Mr. Baretto account of his loan.

"Mr. Barretto having consented to these terms has written

to you on the subject a letter which is herewith transmitted enclosed which I request may receive due attention that gentleman being my friend and taking an interest in my welfare.

"Should the plan now submitted be approved of and brought to conclusion, the Revenue will be regularly paid and the country improved.

(Enclosed in a cover under the Ranny's Seal)

"Dear Sir,

The old Ranny having applied to me for a loan of six lack of rupees as stated, to pay the balance of Revenue due to Government from Burdwan District which I am inclined to lend her provided the whole District is mortgaged to me and I have the collections of Revenue in conjunction with her people as security for the loan, that after paying the annual amount of Revenue to Government, to appropriate the surplus towards the liquidation of her debt, and that both the lands, so mortgaged, and the collections of Revenue of the country to remain in my hands until the whole of the loan and interest is liquidated. The Ranny informed me that she has thro' your means applied to the Board for their permission to the effect, and desired I would write to you on the subject. In consequence of her request I beg leave to request you that in the event of her obtaining the Board's permission and the loan being sanctioned by Government I shall have no objection to comply with Ranny's requisition.

I am & Co.

Amboah,
The 11th March, 1794. (Sd/-) Joseph Barretto

Such a loan could only mean a penetration of and sharing by the usurious merchant capital in the rental income of the aristocracy,[55] it could not have solved the main problem, that of resistance by her principal farmers. In the 6th May 1796 despatch the Collector informs the Board[56] that "there are present due from the Mustagurs Sicca Rupees 3,11,652-14-12-2, for which she is prosecuting them in the Adawlut according to

the Regulations of Government··the Mustgurs have withheld their Revenue and every possible difficulty appears to have been thrown in the way of the Zamindar (not only by them but by others also) that might embarrass and bring her into discredit with Government." In the 2nd July 1796 despatch[57] the collector further informs the Board that he has enquired of the Judiciary regarding the court proceedings against which defaulter mustgurs so that Ranee can pay off her dues, "I have called upon the Judge of this court for an account particulars of the Decrees passed in favour of the Zamindar, wherein the Maha Ranee is complainant, the respective amount of each, against whom, and the date on which the Decree passed." In 1797, on 17th February,[58] the Collector openly asked the Board for expulsion of the Rajah from Burdwan who was instigating the big farmers to withhold payment so that the mother got discredited: "The implied influence of the Rajah and his people exerted to withhold the dues of the Zamindar, and the consequent failure of the punctual payment of the Revenues of Government of which I am well aware, induces me to hope that the Board will deem it expedient in the present instance to recommend to the Governor-General in Council his immediate removal from this district a measure that was once before complied with on the application of my predecessor and of this juncture I humbly conceive equally advisable····· As the combination entered into by the farmers and others preclude all hope of a speedy liquidation of the balance I beg leave to suggest the immediate attachment not only of the lands of which I transmitted statements but of those held in farm by the principal *Bankidars* as well as any property in their possession or found to have been fictitiously made over to others." Two days later the Collector informed[59] that he has decided to attach property above the amount of default so that they got afraid, "to attach lands to beyond the amount in order to ensure the payment··· a measure the Board will I trust approve although not sanctioned by their order as yet." On 20th April, again, he informed the Board[60] that "one of the principal farmers Budden Chund Mitter leaves Burdwan for Hooghly" to avoid payment of

Rs. 71,847/-, "I have since heard that he had moved on to Calcutta". He also referred to the conspiracy, "The set that is made at the Zamindar by a certain number of people as represented in the within, to bring her into disrepute with Government by causing her to fall in balance and thereby have her lands sold for balances of Revenue."

As the arrears accumulated into lakhs, the auctioneers' hammer moved on from pargana to pargana throughout the district.[61] Within six months from 26 August 1796 to 22nd February 1797 alone, lands paying a net revenue of about three lakhs of rupees were ordered for sale and ten parganas with a total jumma of about nine lakhs attached.[62] "There were sales galore, when in 1797 the balance of revenue reached the six lakh figure, the Board took it up as a policy to sell off the Rani's Zamindari in lots, each lot consisting of the several villages. Many of the smaller Zamindaries like those of Chitua, Raipur and Satsika were also subjected to sale, and were altogether liquidated in the process. The Burdwan Raj succeeded avoiding such a fate, because for one thing, it possessed resources large enough to resist complete effacement, and secondly, because Raja Tejchand had made it a point to purchase *benami* very large portions of his mother's estate. After her death when the Zamindari reverted to him, he could, therefore, start afresh with the greater part of his property still intact'.[63]

Lord Cornwallis intended that the elimination of unsatisfactory landowners should be hastened by the sale of lands for arrears of land-tax. It was thus left to the laws of political economy that would operate now that land had become a freely marketable commodity. He did not foresee how painful the [illegible] Shore had advised him that the [illegible]hange their habits in less than a [illegible] did not believe that the govern[illegible]l payment need be taken more [illegible]r that the Law of Sale would be [illegible]cably and without bargaining. It [illegible] exact punctual payment from the

raiyats, who were discovering that the former methods of coercion were no longer permitted.

The main avenue for escape therefore, was structural change in the Zamindari. Subinfeudation was there at Burdwan, as in all feudal societies in the form of intermediate graduation of tenancies. There were "Sudder Mustagers, or farmers holding their leases immediately from the Zamindar." and··· "underrenters called Katkenadars, some of whom have again subdivided the lands they hold among yet smaller farms".[64] But this archaic pattern of subinfeudation was to be removed and the necessities of a new agrarian order needed the evolution of a new pattern of subinfeudation. In the old system, the collection of maximum revenue had never been the primary driving force of the administration. It had not been necessary for the Zamindar to pass on to his intermediaries or tenants, the corresponding degree of fiscal pressure, which could maintain the old pattern of subinfeudation. But under the East India Company accurate revenue returns and absolutely punctual payments were made the primary object of governance. The fiscal pressure on Zamindars was so hard that tension must percolate below, it must be transmitted to the very base, to the smallest of the raiyats. Such pressure and tension broke down the old order where the Zamindars were mainly responsible for collection of rent from the raiyats and payment of revenue through his own trusted employees. Fiscal pressure fell only on him, direct and immediate. He had to find out a new structure where the pressure could smoothly flow downwards and for this reason permanent hereditary leases on same lines as his own terms with the government had become an urgentnecessity. The old system was sometimes humanitarian, the new system could not afford to be such. Customs and conventions were consciously replaced by legal agreements and market motivations. The informality and paternalism of the old system had to be replaced by formal and contractual obligations enshrined in the new order. And in this new process, the Zamindar had to be turned an annuitant, a shadow without a substance, a skeleton, while the actual content of the Zamindari was given away to Patnidars.

For easy and punctual realisation of rent, permanent, under-tenures known as *Patnitaluks* were created by the Burdwan Raj in large numbers. Extensive tracts were leased out on long term in perpetuity and at fixed rent. These talukdars, also known as Patnidars, were thus made proprietors in the same way as the Government had made the Maharaja a proprietor. By the year 1819 permanent alienations of this kind had been extensiveiy effected in other Zamindaris also, especially in the districts of Hooghly, Burdwan, Bankura, Nudeea and Purnea. The situation demanded intervention and these transfer of revenue farming rights leading to a pyradical structure of sub-infeudation had to be formally legalised. This was done by Regulation VIII of 1819 and means were provided to the Zamindars for recovering arrears of rent from Patnidars. The means were almost identical with those by which the demands of Government revenue were enforced against themselves. Thus, at last, the anomaly constantly being pointed out by the Raja and the Collector (since the flight of farmers like Banarassy Dass) between, the mode of extraction by the government in case of Raja and that by Raja himself in case of his underfar-mers, was ultimately resolved.

Regulation VIII of 1819 also known as 'The Law of Revenue Sales', was passed by the Governor-General in Council on the 3rd September, 1819 ; with the object "*to declare the validity of certain tenures, and to define the relative rights of Zamindars and Patni talukdars, also to establish a process for the sale of such taluks in satisfaction of the Zamindar's demand of rent, and to explain and modify other parts of the system established for the collection of rents generally throughout Bengal.*"

In the new structure, the main content of Zamindari, that is the ownership of lands, as also the right to collect rents from the raiyats was given up, while the formal recognition as Zamindar was maintained. With increasing pressure on agriculture due to various reasons, of which gradual destruction of handicrafts was no less important, the extraction and collection of surplus from bottom and its suction to the top needed this new form of subinfeudation. This was much more

resilient and conformed to the situation than the old one, as the essence of property was being continuously devalued down-wards. The Zamindars themselves need not reach the raiyats in person or through their employees, but revenue collections became much more punctual and regular than before. In this process grew up a land market and gave the landed property a wider socio-economic base than ever before.

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3. Regulation v of 1812, Sec. 2 ; and Regulation viii of 1812, Sec. 2
4. Field, Introduction to Bengal Code.
5. Jayananda's Chaitanya Mangal, 16th century Ramprosad Sen's *Vidyasundara* etc. "In the Sarkar of Sharifabad is a beautiful species of cattle, white in colour, and of a fine build.....It is noted for the Barbary goat and for fighting cocks". *Ain-i-Akbari* (ed. Jarrett) II, 125
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CHAPTER III

TANKHA TALOOKS UNDER THE RAJ

Broadly speaking, Tankha was a maintenance-allowance. In other words, it was a monetary allowance in lieu of maintenance granted by the grantor to the grantee principally and usually for discharging some moral obligation of the former to the latter. In this sense, every Tankha-holder was a maintenance-holder in receipt of a monetary allowance in lieu of maintenance.

A 'Tankha' was permanent and also heritable. It was granted by the grantor to the grantee in perpetuity and was secured by a change on immovable property owned by the former so as to be enjoyed by the latter from generation to generation. In legal terminology a 'Tankha' was defined as—'a permanent and heritable allowance supported by a charge on immovable property'. In that decision, it was further held that Tankhas were more than a mere right to receive future maintenance and that they were heritable allowances in the nature of property and, therefore, assignable. In reading this decision, one can accept it as laying down the proposition that Tankhas were both heritable and assignable.

This decision, however, did not categorically state the distinction between a 'Tankha' and a mere right to receive future maintenance. According to this decision, it appeared that—(1) a Tankha was heritable, and (2) a Tankha was supported by a charge on immovable property. But it was well-known that rights and interests which were heritable might not be assignable also. It, therefore, could not be said that merely because a right to receive 'Tankha' was heritable, it followed that it was assignable. The fact that it was supported by a charge on immovable property could not take it out of the ambit of Section 6 (dd) of the Transfer of Property Act. The Transfer of Property Act was amended in 1929 and a new Section 6(dd) was

added which provided that a right to future maintenance "in whatsoever manner arising, secured or determined" could not be transferred. It was also well-known that under Section 100 of the Transfer of Property Act, a charge did not create any interest in the property charged.

The crucial question was whether the grantee of a Tankha was the holder of a bare incorporeal and personal right of future maintenance, or, was he the holder of an estate in property in lieu of maintenance. If the former, the Section 6(dd) of the Transfer of Property Act applied : but if the latter, the Section had no application. It was held[2] that a right to maintenance created by a deed, though made a charge on immovable property could not be transferred. It was stated in Mulla's Transfer of Property Act[3] that when the right to maintenance was created by a deed, the question whether or not the right was alienable depended upon the intention of the parties as expressed in the deed. But the intention of the grantor of a Tankha was principally and almost invariably confined to the maintenance of the grantee and his family. His object in granting the Tankha was that the Tankhaholder and his heirs should be properly maintained in perpetuity. He did never intend and could never desire that the Tankhaholder should have the right to dispose of the Tankha granted to him by sale or mortgage and make a capital out of it. The deed creating a Tankha, therefore, never expressly conferred upon the Tankhaholder the right of transferring the Tankha granted. It may, therefore, be concluded that since the passing of the Transfer of Property Act, 1929, and in view of the provisions contained in Section 6(dd) incorporated therein, a Tankha, though heritable, was not assignable. The present legal position with regard to Tankha, therefore, appears to be that while Tankhas were both heritable and transferable before the passing of the amended Transfer of Property Act, 1929, they are now heritable but not transferable, and that a Tankha transferred or assigned by sale, gift, relinquishment or otherwise is no longer valid in law.

The origin of the Tankha-system in the Burdwan Raj family

cannot be exactly ascertained. It is, however, clear that the existence and prevalence of this system in the Burdwan Raj Estate was a very old one and it prevailed as a custom in the Burdwan Raj Family. It was perhaps as old as the foundation by Abu Roy of the Burdwan Raj Dynasty in Bengal early during the Mughal Rule in India. Abu Roy, with whom the seventeen-generation-old Burdwan Raj Dynasty began its history in Bengal was a settler from the Punjab. He was a Kshatriya by caste and a trader by profession. He came from the Punjab on a pilgrimage to Puri on foot via Ahalya Rai Road and, on his way back passed through the village Baikunthapur near Gangpur in the outskirts of the present Burdwan Town. Burdwan was then a health-resort and because of its rich agricultural wealth it was then known to be 'a garden in desert'. It was a flourishing business-centre too. Healthy and congenial climate and the business-like atmosphere of the place attracted him and he settled there and engaged himself as a trader in famous "Shawls" and warm clothings of Amritsar. The business proved to be extremely profitable and flourished. His huge earnings in the business enabled him to develop and extend it widely and enrich himself considerably. Gradually, he himself and after him his heirs and successors—Babu Roy, Ghanashyam Roy, Krishna Ram Roy, Chitrasen Roy, Kirti Chand Roy and others—found favour in the Court of the local Mughal ruler. They acquired extensive landed properties, raised their ranks as "Chowdhuries", attracted the notice of the Mughal Emperor and were awarded the status and power of Chiefs entitled to maintain an army of five thousand. They conquered also big areas belonging to other less powerful rulers like the Rajas of Vishnupur and Bankura and this enriched themselves and extended their estate in landed property. Gradually. they received from the Court of the Mughal Emperor the distinguished titles of Raja and Maharaja and ultimately the twelfth head of the dynasty Triloke Chand was acknowledged as and was honoured with the hereditary distinction of Maharajadhiraja Bahadur. Thus the Burdwan 'Rajgi' was placed on an extraordinarily high and distinguished footing and the Burdwan Raj Estate with

the vast landed property, comprising fifty-six Parganas and extending over the entire Burdwan Division and even beyond it was recognised as the biggest Zamindari in Bengal and in India. Burdwan revenue was the basis of the East India Company's political expansion since the days of Plassey and therefore the hereditary distinction of Maharajadhiraja Bahadur subsequently received the recognition of also the British Rulers of India under whom Burdwan Raj rose still higher in rank. This hereditary title was attached to the Estate. There were only two Maharajadhiraja Bahadurs under the British regime—the Maharajadhiraja Bahadur of Burdwan and the Maharajadhiraja Bahadur of Darbhanga. The former excelled as the proprietor of a vast reaa of landed property while the latter was famous for his fabulous wealth comprising money in cash, gold and other valuables.

The Burdwan Raj Estate, comprising a vast area of landed property, was treated as an impartible estate, succession to which was governed by the law of primogeniture. The eldest son as the 'Karta' of the Burdwan Raj joint family succeeded to the 'Rajgi' while the other sons received permanent and hereditary maintenance allowances having a charge on the estate. It was this permanent and hereditary allowance secured by a charge upon the estate and payable from the estate coffer that came to be known as the 'Tankha'. Originally, the grant and payment of this 'Tankha' was confined to the junior members of the Raj family. But gradually, some of the very near relations of the Burdwan Raj Family also became recipients of the Tankha and swelled the list of Tankha-holders mainly as recognition of the estate's moral obligation towards them and in some cases as a concrete reward for their meritorious services to the estate. Later on, the scope of the Tankha-system became still wider, and specially by the time when Mahatab Chand succeeded to the 'Rajgi', even the distant relations residing at Burdwan were granted Tankhas. The Palace papers record a story that the Maharaja of Kashmir once paid a visit to Burdwan as the honoured guest of the Raja Mahatab Chand. It was said that he had brought with him quite a large number of famous Kashmiri 'Shawls' for presentation to the members

of the Burdwan Raj Family. But a good numbers of the 'Shawls' having been found to be left surplus after such presentation, this distinguished guest requested the Raja to send for and invite some of the latter's distant relatives and caste-men so as to enable the former to gain their acquaintance and distribute the remaining 'Shawls' among them in memory of his visit to Burdwan. But as no such distant relatives and caste-men could be available at the time, the distinguished visitor dropped a suggestion to the Raja to arrange for immigration of as many Punjabi Kshatriyas as possible from the Punjab and help settling them as permanent residents of Burdwan by granting them monetary allowances in lieu of maintenance payable from the estate coffer. He narrated to the Raja why and how the suggestion made by him had been acted upon by the Kashmir-Raj at Kashmir as a matter of necessity. In explaining the object of his suggestion, he hinted at the position of the Kashmir-Raj in the state of Kashmir. While the Maharaja of Kashmir were Hindus, they were destined to live in and rule in an area which was inhabited by an overwhelming large number of Muslims. This situation in which the Kashmlr-Raj was placed in his state was, to say the least, undesirable. It was, indeed, fraught with danger to the ruler's personal safety and the stability of his state. To meet this situation, the Kashmir-Raj brought in and got permanently settled in the State of Jammu and Kashmir a good number of people belonging to his own community. Most of these new settlers were either friends or relatives of the Kashmir ruler and all of them were his caste men and each of them was granted a monetary allowance in lieu of maintenance payable from the Kashmir-Raj State treasury. It was thus that a friendly and faithful society, consisting of relatives (near and distant) and well-wishers was formed in which the Maharajas of Kashmir and their families could live and move freely with confidence that the members of this newly formed circle of maintenance-holders would be their firm and sincere supporters in all matters and that they would stand solidly behind them in well and woe. Casually, the visiting ruler pointed out to the Raja that the Kashmir-Raj was not alone in taking this line of

action to meet the peculiar situation in Kashmir and thereby to ease and strengthen the ruler's position in his state. The Nizam of Hyderabad also was known to have moved in the same line to meet a similar situation in the State of Hyderabad where the position of the ruler vis-a-vis the ruled was exactly the reverse of that of Kash mir—the ruler himself belonging to the Muslim community while his subjects were mostly Hindus.

Accordingly, to this end in view and to meet this necessity, Mahtab Chand decided to act upon the suggestion received from the Maharaja of Kashmir and arranged bringing in and getting permanently settled in Burdwan quite a good number of Kshatriyas from the Punjab who like the Burdwan Raj family, were all governed by the Mitakshra school of Hindu Law instead of the "Dayabhag" School prevailing in Bengal and who observed and followed traditionally Punjabi rites and customs in important social matters. Along with these Kshatriya families from the Punjab and the United Provinces some 'Saraswat' Brahmins were also brought to act as their family priests and to perform the important customary rites followed by them. Each of these families was given a suitable monetary allowance in lieu of maintenance. Even the 'Saraswat' Brahmins, who came as family-priests of these new Kshatriya settlers, were granted maintenance allowances in small amounts to supplement their earnings from their profession of priesthood. The maintenance-allowances so granted to the families of these new settlers were also called 'Tankhas' although their incidence and character differed widely from those of Tankhas proper as per definition of 'Tankha' noted above.

Two different kinds of Tankhas were thus in vogue in the Burdwan Raj Estate. Tankhas proper as per definition given above were permanent, hereditary and secured by a charge on immovable property owned by the grantor and they were usually known as "pucca tankhas". Grant of these "pucca tankhas" was kept strictly restricted and was confined exclusively to a very small circle consisting of the members of the Raj Family itself or to very near relatives related to the Raj-family through close connection by marriages. The newly

created Tankhas were, however, neither permanent nor hereditary. They were called 'kancha tankhas' and were purely in the nature of temporary grants, continuance and payments whereof depended entirely on the discretion of the proprietor of the Burdwan Raj Estate. These 'kancha tankhas' were granted to the grantees for their life, although they were mostly continued and paid to the heirs and successors of the original grantees after their death at the discretion of the Zamindar. The grants of these 'kancha tankhas' were also made by "Sanands" and "Parwanas' signed and sealed by the Raja and registration of Tankha-deeds was rarely resorted to even after the Law of Registration of documents came into force. The number of Kancha Tanka-holders was a very large one and the total amount of 'kancha Tankhas' paid to them entailed a heavy expenditure on the Burdwan Raj Estate Treasury. A separate 'Sherista' or Department known as the 'Huzuri-Sherista' under direct and personal management and supervision of the Raja had to be opened for maintaining a proper account of all types of allowances drawn and distributed from the Estate Treasury including 'pucca tankhas' and personal allowances received by the Raja himself and the members of the Raj Family. Even during the Court of Wards management of the Burdwan Raj Estate, the 'Huzuri Sherista' continued its work with a separate budget known as the 'Proprietory Side of the Budget' under charge of a senior officer with the designation of "Huzur Secretary" working directly under instructions from and supervision of the Raja himself living in England at that time as a Ward under the Court of Wards.

From a review of the history of the Tankha-system prevailing in the Burdwan Raj Estate as narrated above it is evident that this system grew up naturally and almost inevitably. As a matter of fact it was the impartibility of the Burdwan Raj Estate governed by the law of Primogeniture that gave birth to this system and it can not be said that the Tankha-system existed exclusively in the Burdwan Raj Estate and formed the special feature of that Estate. This system did exist under the same or different names throughout India in many other

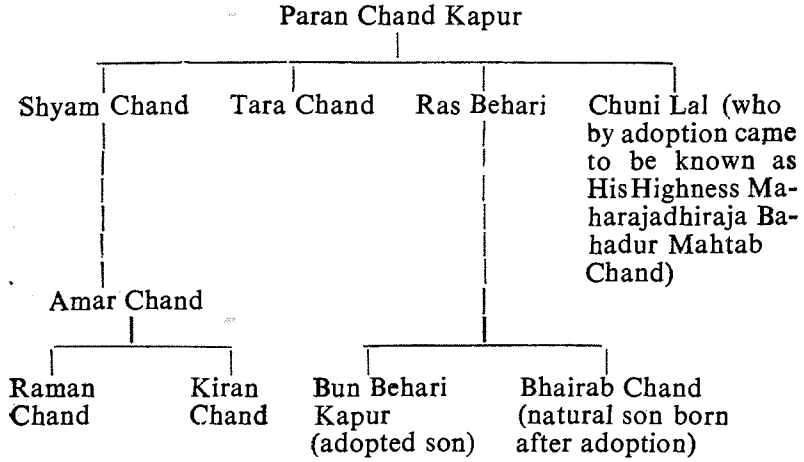
estates of ruling chiefs or estates owned Zamindars where the proprietors claimed their States or estates to be impartible and succession to which was governed by the Law of Primogeniture. It was known to have existed even in Bengal in the family of the Nawab of Murshidabad where the members of the Nawab family and the near relatives actually received monetary allowances in lieu of maintenance and these allowances, like the Tankha proper, or "pucca tankhas", were permanent, hereditary and secured by a charge on immovable property. The rights of these maintenance-holders to receive their maintenances-allowances granted to them in perpetuity for enjoyment from generation to generation from the profits of the charged immovable property were recognised by the British Rulers in India and a few heirs and successors of the original grantees of such maintenance-allowances did exist even a few years ago and did receive from the British government the maintenance-allowances payable to them which in some cases were very small and varied between rupees two and rupees ten per month. The Tankha-system under the same or a different name prevailed widely in the families of the ruling chiefs of Rajasthan. In the State of Orissa in particular, there was a very large number of ruling chiefs and Zamindars, both big and small. Most of them held the titles of Rajas and Maharajas. The states ruled by the ruling cheifs were known as the "Garhjat-States" which were impartible through long-standing custom and succession to these States was governed by the Law of Primogeniture. On the death of the Ruling Chief, his eldest son succeeded as a ruler whereas his younger brothers automatically and as a matter of right became entitled to suitable maintenance-allowances from the State befitting their position and status. Like Tankhas proper or "pucca tankhas" prevailing in the Burdwan Raj Estate, those maintenance-allowances received by the juniors of the family of the ruling Chief were permanent, hereditary and secured by a charge on the immovable property comprised in the "Garhjat-State" itself and these maintenance-holders were recognised as having their legitimate shares in such a State to the extent

of and in proportion to the amounts of the maintenance-allowances received by them. These rights to proportionate shares in lieu of which they received maintenance-allowances were indefensible under the Law and were taken into account by the government of India while assessing and calculating the amount of the allowances paid to the Rulers of the 'Garhjat' States when these States ceased to exist by acquisition through the process of merger. An exactly the same system prevailed in the Zamindari estates owned by local Zamindars in Orissa and the number of maintenance-holders receiving permanent and hereditary maintenance-allowances secured by a charge on the immovable property comprised in these Zamindaries was so large that the government of Orissa, during Acquisition of these Zamindaries under the Orissa Estates Abolition Act, 1951, was required to make adequate provision in the said Act for fully protecting their rights and interests in the vested Zamindari estates in order to avoid complications not only in the management of the vested estates but in the matter of computing and calculating the amount of compensation payble to the outgoing Zamindars after considering and accepting the claims of the maintenance-holders concerned to a propertionate share of the compensation to be received by them in lieu of their maintenance-allowances charged on the vested estates.

Some concrete cases of Tankhas ('pucca tankhas') in the Burdwan Raj Estate can be mentioned and it is worthwhile to discuss and explain their operation in actual practice.

The oldest case of "pucca tankha" of which a documentary evidence has been available happens to be the permanent and heritable maintenance-allowance of Rs. 1000/- per month granted by Maharani Adhirani Kamal Kumari, the fifth wife of Maharajadhiraja Taj Chand' who was the son of the first Maharajadhiraja Bahadur Triloke Chand and the great-great-grandfather of the present Burdwan Raj. The grantee of this 'Pucca Tankha of Rs. 1000/- per month happened to be Paran Chand Kapur, the brother of Maharani Kamal Kumari and the natural father of Mahatab Chand who was taken in adoption after the mysterious death of Maharaja Kumar Pratap Chand,

the only natural son of Raja Tej Chand and the hero of the "Jal Pratap episode". After the mysterious death of Pratap Chand, no natural son was born in the Burdwan Raj family successively for three generations and adopted sons succeeded to the 'Rajgi' and Zamindari of Burdwan till the tradition of adoption was broken by the birth of the present Raja as a natural son to the Raj family. Paran Chand Kapur, the grantee of this "pucca-tankha" of Rs. 1000/- per month held a vast and tremendous influence in the Burdwan Raj Estate in his capacity as the brother-in-law of Raja Raja Tej Chand and became the Dewan-in-Raj holding the highest executive post in the management of the Burdwan Zamindari. The genealogy of this great personality who was destined to have a decisive role in shaping the destiny of the Burdwan 'Rajgi', is given below :



The purpose of including even the genealogy of a Tankha-holder in a concrete case of 'pucca tankha' is to emphaise its importance making it a case deserving special study. Placed in a higly strategic position in the Burdwan Raj Family as the brother of Maharani Kamal Kumari, he planned to enhance his influence on the old Raja still further and successfully managed to do so by manipulating and actually bringing about an untimely and undesirable marriage of his younger daughter

Basanta Kumari with Raja Tej Chand, who had more than one wife living at the time and who was already related to him as a brother-in-law, being the husband of his sister Kamal Kumari. It was he, who taking advantages of his unique position in the Burdwan Raj Estate and the Burdwan Raj Family, went so far as to plan challenging the identity of Pratap Chand, the legitimate heir and would-be successor to the Burdwan 'Rajgi' as the only son of the old Raja Tej Chand, when he received the report of Pratap Chand's return to Kalna after self-inflicted benishment for 12 years. It was through his machination and direction from behind the screen that the most daring "Jal Pratap" drama was staged successfully with supreme caution and skill with a view to hoodwink the entire Burdwan Raj Family including the old Raja Tej Chand himself. The mysterious death of Pratap Chand paved the way for the entry of Paran Chand's son Chunilal to the Burdwan Raj Family as an adopted son of Rani Kamal Kumari and her extremely old and senile husband Tej Chand who was almost in his death-bed at the time. The genealogical table is specially important for another reason also. It contains the name of another person, late Bun Behari Kapur, who happened to be the adopted son of Ras Behari Kapur, one of the four sons of the original Tankha-holder Paran Chand Kapur, and who became later the natural father of Sir Bijay Chand Mahatab, and thereby held a position of enormous influence in the Burdwan Raj Estate.

The 'pucca tankha' of Rs. 1000/- per month was granted to Paran Chand Kapur by his sister Rani Kamal Kumari and was made payable from the profits of two Zamindari Parganas of Haveli and Gayerhar comprised in the Burdwan Raj Estate. These two Parganas were owned by the said Maharani as her "Stridhan" property and was managed through a separate department under her direct supervision and control as the sole proprietor thereof. The grant was made after the death of her husband Raja Tej Chand when her adopted son Mahatab Chand succeeeded to the 'Rajgi' as the proprietor of the entire Zamindari comprising the Burdwan Raj Estate. The "Tankha-

nama" or the "Tankha-Patra" making his grant a charge on the immovable properties constituting the Maharani's own "Stridhan"' therefore, required to be ratified and the grant contained therein confirmed and sanctioned by the then Raja Mahatab Chand as the proprietor of the Burdwan Raj Estate. The necessary ratification was accorded forthwith by a separate 'Parwana' issued on the same day under the seal and signature of the Raja. The copies of the 'Tankhanama' and the Ratification-deed reproduced verbatim from the original documents concerned are given below :—

১নং কাছারী	শ্রীশ্রীমা দুর্গা চরণ ভরসা
Maharani's seal (Letters on the seal engraved in Persian)	⊗
+	পরম পূজনীয় শ্রীযুক্ত পরানচন্দ্র বাবু—
Maharani's Signature × (Illegible)	লিখনং কার্য্যঞ্চাগে আমার জমিদারি পরগনে হাবেলি ও গয়রহের মষাহেরার মধ্যে আপনকাকে সানিয়ানা কোম্পানি ১২০০০ বারো হাজার টাকা তনখা মোকরর করিয়া দিলাম আপনি আমার জমিদারি পরগনে হাবেলির কাছারি হইতে উক্ত তনখা মাষ মাষ ১০০০ টাকা হিসাবে মাহিয়ানা উক্ত ১২০০০ হাজার টাকা সন ২ রশীদ দিয়া লইয়া পুত্র পৌত্রাদি ক্রমে ভোগবান থাকিবেন ইহাতে আমার ও আমার ওয়ারিশানের কোনো আপত্য নাই ইতি সন ১২৪৮ বার সত আটচল্লীষ সাল তারিখ ২৩ তেইষা মাঘ।

× *(Ratification deed)*

Maharani's Signature in initials (Illegible)	শ্রীশ্রীহরি শরণং ⊗
Maharani's seal with letters thereon engraved in Persian	পরম পূজনীয় শ্রীযুক্ত পরানচন্দ্র বাবু—
	লিখনং কার্য্যঞ্চাগে আপনকাকে শ্রীমতি মাতা মহারাণী ঠাকুরাণী আপনস্বীয় জমিদারি পরগনে হাবেলী ও গায়রহর মোসাহেরার মধ্যে সালিয়ানা কোম্পানী ১২০০০ বার হাজার টাকা তনখা আপনকাকে মোকারার করিয়া এককেতা সনদ প্রদান করিলেন আমি তাহা মঞ্জুর করিয়া এই পত্তোনা প্রদান করিতেছি বিমজীম সনন্দ তনখা সন সন মাষ ২ উক্ত জমিদারের মোসাহেরা হইতে লইয়া পুত্র-পৌত্রাদি ভোগবান থাকীবেন ইহাতে আমার কোনহ আপত্য নাই ইতি সন ১২৪৮ বার শত আটচাল্লিষ সাল তারিখ ২৩ মাঘ।

"Tankhanama" or "Tankha-Pahe"

Maharani's Seal (Letters on the seal engraved in Persian)	1. Nong. Kāchari Srī Srī Mā Dūrga Varasa Param Pūjaniya Srīyukta Paran Chandra Babu Likhanong Karyanchāgay Āmar Zamindari Parganay Haveli Gayerhar Mahaserār Madhyay Āpanākākay Saninana Company 12000 Bāro Hāzar Tākā Tankhā Mokrar Kariā Dilam/Āpani Āmār Zamindari Parganay Havelir Kāchāri Hitay Uktya Tānkha Māsh Māsh 1000 Ek Hāzar Tākā Hisabay Sahiana Ukta 12000 Baro Hazar Taka San San Rashid Diya Laiya Putra Putradi Crame Bhogaban Thakiben/Ehatay Āmar O Āmar Orish Canar Kono Āpatya Nai/Iti San 1248 Baro Sata Atchallish Sal Tarik 23 Taish Māgha
Maharani's Signature (Illegible)	

(Ratification deed)

Maharaja's Signature in initials (Illegible)

Srī Srī Hari Saranong

Maharaja's Seal with letters thereon engraved in Parsian.

Parampūjaniya Srījukta Paran Chand Babu

Likhanong Karyanchāgay Āpanākey Srīmati Māta Maharāni Thākuranī Āpansiya Zamindari Parganey Haveli O Gayerhar Mosaherar Madhya Sahiana Company 12000 Baro Hazar Tākā Tankhā Apanakar Mokrar Kariya Ekkatā Sanand Pradan Karilen Āmi Tahā Manjur Kariya Ei Parayana Pradān Karitachi Bimjimsanand Tankha San San Mash Mash Ukta Zamindari Mosahera Haitay Laiyā Pūtra Pūtradi Cramē Bhogbān Thākiben Ehatay Āmar Konohay Apatya Nai/ Iti San 1248 Baro Sata Atchallish Sal Tarik 23 Māgh.

The documents shown above reveal at a glance how the Tankha-system in vogue in the Burdwan Raj Estate worked in actual practice and the form and procedure adopted in granting Tankhas by the Raj Estate. They are concrete evidences showing that Bengali, the regional language of the State in which the Burdwan Zamindari grew up and flourished, was given prominence in carrying out important works in the various 'Cutcheries' of Departments of the Estate. Both the documents are old ones having been executed in 1248 B.S. They are certainly not the oldest documentary records of their kinds. But still they are 138 years old. The 'Tankhanama' concerned was issued in the form of a *Sanand* and the ratification thereof was made by "Parwana" in keeping with the superior prestige of the grantor and the ratifier in relation to those of the grantee receiving a favour from them to maintain himself and his family. The "Tankhanama" proves that the grant of

the maintenance-allowance made therein was permanent, hereditary and secured by a charge on immovable property. Both the documents are in the proper form in vogue in the Estate and are not registered although the grant made and confirmed therein is practically a transfer of some interest in immovable property. Registration of the documents was not necessary as the Law of Registration of documents had not come into force at the time. Paran Chand Kapur, the original grantee of the 'Tankha' of Rs. 1000/- per month, received and enjoyed it during the rest of his life and on his death it was inherited by his three sons (the fourth son Chunilal having already gone over to the Burdwan Raj Family by adoption) Shyam Chand Kapur and Ras Behari Kapur in equal shares at the rate of Rs. 333-5 as-4 pies each. They all received and enjoyed their inherited shares of the Tankha throughout their lives and on their death the shares held by them passed on to their respective lineal descendants concerned. Tara Chand died without any issue and had, during his life time, bequeathed his inherited share of the Tankha along with his other movable and immovable properties to his brother Mahatab Chand himself for ensuring and carrying on the 'Seba Puja' of the deity installed by him in the building named "The Willbati" built by him for the purpose. Shyam Chand's inherited share of the Tankha passed on to his son Amar Chand and after Amar Chand's death to his two grandsons Raman Chand and Kiran Chand who inherited it in equal shares. The share of the Tankha inherited by Ras Behari was, on his death, equally distributed between his adopted son Bun Behari Kapur and the natural son Bhairab Chand born after adoption. Their inheritors duly received payment of the share of the Tankha apportioned to them by inheritance upto the time of abolition of the Zamindaries in West Bengal under the West Bengal Estate Abolition Act and acquisition thereof by the State Government free from all encumbrances created by the outgoing Zamindars. The enforcement of the said Act ended the Burdwan Raj Estate and the Tankha-system in vogue therein.

Another concrete case of 'pucca tankha' in the Burdwan

Raj Estate was that of Rs. 1000/- per month granted by Aftab Chand Mahatab, the grand-father of the present Raja to Banshagopal Nandey in the year 1881. The grantee of the Tankha in this case happened to be late Banshagopal Nandey who wielded a great influence on the entire 'Kshatriya-Samaj' of Burdwan because of his close relation with the Burdwan Raj Family. Late Banshagopal Nandey was the brother-in-law of Mahatab Chand Mahatab, who had married the former's sister Rani Narayan Kumari. He happened to be also the natural father of late Aftab Chand Mahatab, who was the adopted son of Raja Mahatab Chand and Maharani Narayan Kumari. Banshagopal Nandey was also the father-in-law of Raja Bahadur Bun Behari Kapur, the natural father of Sir Bijoy Chand Mahatab, who was the adopted son of the aforesaid Aftab Chand. This concrete case is also important because of the fact that it is known to be the last pucca tankha granted to any person by the Burdwan Raj Estate. The genealogy of this family is given below, as the Tankha got divided after the death of the Tankha-holder.

Banshagopal Nandy

1	2	3	4	5	6	7
Aftab Chand	Nirmal Prakash	Jyoti Prakash	Gati Prakash	Mukti Prakash	Dipti Prakash	Shanti Prakas

The genealogical-table above shows the name of Aftab Chand, the eldest son, who succeeded to the 'Rajgi' and Zamindari of Burdwan as the adopted son of Mahatab Chand. It also reveals the names of Banshagopal's remaining six sons some of whom widely indulged in selling away their inherited shares of the Tankha and left this practice as a legacy to their own sons and successors who, after the stoppage of payment of the Tankhas inherited by them on the abolition of the Zamindaries in West Bengal, went to the Court of Law to seek a legal remedy.

The original 'Tankhanama' granting the Tankha of Rs. 1000/- per month to Banshagopal Nandey could not be

procured as it was reported to have been filed in the court in connection with the claim cases which still the living grandsons of Banshagopal had brought in for obtaining a Civil Court decree in their favour. An English translation of the recital in this 'Tankhanama', so far as it could be collected from the relevant records available in the custody of these grandsons, is given below :

> "Since you are my natural father, it my bounden duty to arrange for your maintenance and for that I am giving you a monthly sum of Rs. 1000/- (Rupees One thousand) as Tankha from the profits of the Zamindary of Kujang and Gajurhar, as it is necessary to make the said Tankha permanent. So, according to the rules of the Estate, for your maintenance and the maintenance of your sons and grandsons, I am executing this 'Sanand' according to the compassion and wishes of my mother Maharani. As you are getting monthly Tankha of Rs. 1000/- from the profits of both these Zamindaries, in the same way your sons, grandsons, great-grandsons and children will receive it from generation to generation, the aforesaid two Zamindaries will remain in charge for the said Tankha".

This 'Tankhanama' was executed and signed by Aftab Chand and sealed with his seal on 17.12.1881 and was registered on the following day (the Law of Registration of Documents having come into force by this time).

The 'Tankhanama' reveals that the grantor of the Tankha in this particular case was no other than the grantee's natural son and the person according to whose wishes it was granted was the sister of the grantee and the adoptive mother of the grantor. Like other cases of its kind, this 'Tankhanama' also clearly shows that the maintenance-allowance granted therein was permanent, hereditary and secured by a charge on immovable property. The recital in this deed to the effect that the maintenance-allowance thereby granted was being given in accordance with the rules of the Estate proves that the Tankha-system under which the Tankha was granted was a long-standing one and regular rules did exist in the Burdwan Raj Estate

for its operation in actual practice. The special feature of this 'Tankhanama' is the fact that it is the only case of its kind in which the grant of the maintenance-allowance made therein was made a charge on immovable property comprised in a Zamindari owned by the Burdwan Raj in a different State other than the State of West Bengal. In all other cases of pucca tankhas known to have been granted by the Estate, the property charged with the grant was comprised in the 'Zamindari of Chakla Burdwan' within the State of West Bengal. This Kujang Estate was comprised in Touzi No. 14 of the Cuttack Collectorate within the State of Orissa. It was purchased by Raja Mahatab Chand in a court sale in execution of a decree in the 'Benami' of his wife Maharani Narayan Kumari. It was the only Zamindari owned by the Burdwan Estate in Orissa and it was the most profitable Zamindari too, yielding a net annual income of Rupees Two lacs approximately.

"The Orissa Estates Abolition Act, 1951" for acquisition of Zamindaries in Orissa contained provisions for protecting and safe-guarding the rights and interests of those maintenance-holders who were entitled to receive permanent and hereditary maintenance-allowances secured by a charge on the Zamindari vested in the State Government. In "The West Bengal Estates Abolition", however, there was no such provision. The property charged with the Tankha in this particular case, because of its being comprised in a Zamindari within the State of Orissa, enabled the Tankha-holders concerned to fight for their rights with confidence from a much more advantageous position. After the death of Banshagopal Nandey, his Tankha of Rs. 1000/- per month was inherited in equal shares by his six sons Nirmal Prakash, Jyoti Prakash, Gati Prakash, Mukti Prakash, Dipti Prakash and Shanti Prakash and on that basis each of them became entitled to receive payment of a sum of Rs. 166-10 as-4 pies as Tankha from the Estate Coffer. Shanti Prakash, the youngest son, sold away the whole of his Tankha and Gati Prakash followed suit by transferring a part of the Tankha inherited by him to the local merchants of Burdwan. The Tankha inherited by Jyoti Prakash was sold away in

execution of a decree obtained against him by his creditors and was purchased by his brother Mukti Prakash who, later on, relinquished the same in favour of two sons of Jyoti Prakash. The grandsons of late Banshagopal Nandey are still living and they all received payment of the Tankhas inherited by them from their deceased father regularly from month till the abolition of the Zamindary system in West Bengal and Orissa. The Burdwan Raj Estate itself having ceased to exist with the vesting of the Zamindaries comprised therein, the Tankha-system in vogue in this Estate also came to an inevitable end.

Before the abolition of Zamindaries, the Tankha-system was carefully nursed and fostered by the Estate which considered it as its sacred duty to see and ensure that the Tankha-holders, who were, to all intents and purposes, the dependents of the Estate, were properly maintained and the maintenance allowances on which they depended for their livelihood were received by them regularly without the least possible harassment or trouble. The 'Huzuri-Sherista' with an experienced and able officer working directly under instruction and direction from the proprietor himself was maintained by the Estate to look after and to safe-guard the interests of Tankha-holders and to ensure smooth and timely payment of the Tankhas payable to them. The same department was entrusted with the maintenance of accounts and all other works in connection with the management and regular payment and proper disbursement of the allowances which the proprietor himself and his family drew from the Estate coffer. The work of this department was not confined to receiving and paying up promptly the Tankhas to the local Tankha-holders living at Burdwan after properly checking and passing the Tankha-bills which they submitted personally or through duly authorised messengers. It included also regular and timely payment of Tankhas payable to those Tankha-holders or their widows, who, in their old age, lived in a distant place of pilgrimage like Brindaban, Varanasi or Haridwar. Payment of Tankhas payable to these old people was made through postal remittances at the cost of the Estate. This reveals the anxiety and deep sympathy of the Burdwan

Raj Estate towards the Tankha-holders who depended upon it for their maintenance. Originally a product of necessity—the very urgent necessity of providing for suitable monetary-allowances in lieu of maintenance to the junior members of the impartible Burdwan Raj Estate governed by the law of primogeniture—the scope and area of operation of the Tankha were gradually extended to a much bigger circle comprising distant relatives and castemen, thus bringing in its fold a very large number of persons whose only source of income was the Tankhas which they received from the Estate.

Although Tankhas were granted by the Estate to the Tankha-holders with the principal object of enabling them to maintain themselves and their families properly and their descendents, the transfers of Tankhas in whole or in part to third parties in no way related to the Estate were freely recognised by the Estate and these transferees, stepping into the shoes of the Tankha-holder-transferers, were treated on an equal footing and regular and smooth payment of the amounts of Tankhas actually transferred to these transferees was fully ensured. The lump sum paid for a Tankha represented its capitalised value at the current rate of interest. Added to this was some amount as prestige-money. In some cases considered to be fit and proper and in order to accomodate and help the Tankha-holders in their need or save them from dire distress and trouble, the Estate itself sometimes came forward as a transferee to get back through purchase or relinquishment of the whole or part of the Tankhas granted by it to the original grantees on payment to the Tankhaholder-transferers of a proper and suitable amount in lump so as to enable them to meet their financial needs and thus be freed from their distress. The Burdwan Raj Estate was so keen about the welfare of its Tankha-holders and its sympathy for them was so deep that it went so far as to get back from the needy Tankha-holders a part or the whole of the Tankhas granted to them through proper transfer by a registered sale-deed ('Kobala') or by a registered deed of relinquishment on payment to them an adequate sum in lump as consideration even after the passing of 'The

Amended Transfer of Property Act, 1929', which, by incorporating additional Section 6(dd), made provisions there in against all sorts of transfers or assignments of Tankhas. A concrete case is being cited as an example. Kiran Chand Kapur, one of the great-grandsons of Paran Chand Kapur incurred heavy debts and died leaving his family, consisting of his widow and minor sons, in great distress. In order to save the family from constant harassment by the creditors, the widow, on her own behalf and as the natural guardian of her minor sons, approached the then Maharaja Bijay Chand Mahatab, for help and succour. Under his orders a part of the Tankha inherited by the minor sons from their deceased father was purchsed by the Estate on payment of an adequate lump sum as consideration—through a registered 'Kobala' executed by the widow as the natural guardian of the minors. This sale-deed was executed and registered after 1929 and it still exists. Over and above the Tankhas granted by the Estate to those Tankha-holders, occasional monetary help in the shape of lump sum grants of a non-recurring nature, both big and small, was also given to them by the Estate at the discretion of the proprietor on the occasion of important social functions, like marriages of their daughters or sacred-thread ceremonies of their sons, held in their families.

The abolition of Zamindaries removed along with it all the remnants of the Zamindari system such as Tankha. "The West Bengal Estate Abolition Act" and "The Orissa Estates Abolition Act, 1951", which were passed and enforced by the West Bengal and Orissa Governments respectively had slightly different result in the matter of Tankha-holders' interest affected by the abolition. The West Bengal Government acquired the Zamindaries in the State free from all encumbrances created by the outgoing Zamindars. The Burdwan Raj Estate, by granting Tankhas and securing them by a charge on immovable property comprise in its Zamindaries, had created such encumbrances in the eye of law, and as these Zamindaries owned by that Estate before their abolition were now vested in the State of West Bengal free from all encumbrances created by the out-

going Zamindar. The Tankhas lost their permanent character and ceased to have any difference with the 'Kancha Tankhas' in vogue in the Burdwan Raj Estate before its extinction. The 'Kancha' Tankha-holders and the 'Pacca' Tankha-holders now belonged to the same category and were left without any legal remedy or relief. Some lineal descendants of Paran Chand Kapur, who are still alive and who ceased to receive payment of their Tankhas from the vested Burdwan Estate on the abolition of Zamindaries under "The West Bengal Estate Abolition Act, had in their search for a suitable legal remedy, submitted a memorandum to the State Government of West Bengal claiming that, being grantees of Tankhas, which were permanent, heritable and secured by a charge on immovable properties comprised in the Burdwan Raj Zamindaries now vested in the State, they were in the position of co-sharers of the Raja, the outgoing properietor of the vested Estate, in respect of the charged properties where they had acquired a co-owner's interest and as such they were entitled to receive a proportionate amount, however small, from the total compensation computed and payable under the law to the Raja of Burdwan for acquisition of his Zamindaries in the State of West Bengal. The Government did not entertain or accept this claim as represented in the Memorandum and one of the claimants submitting the memorandum was advised in writing through an official letter issued by Secretary of the Government Department concerned to file a regular Civil Suit against the Raja and obtain a decree therein establishing the legality of and the rights claimed and then submit the Civil Suit Decree to the government for favourable consideration. No Civil Suit as advised was, however, filed. But the position was somewhat different in the case of those Tankha-holders whose Tankhas were made a charge on immovable property comprised in the Burdwan Raj Zamindari in the State of Orissa, which was vested in that State under the provisions of "The Orissa Estate Abolition Act, 1951." As already stated, The Orissa Estates Abolition Act, 1951, provided for special protection of the interest of the Tankha-holders belonging to the said category.

Under Section 18(1) of "The Orissa Estate Abolition Act, 1951," every maintenance-holder in receipt of a monetary allowance in lieu of maintenance was declared to be a charge on the Estate vested in the State Government. The said Act further provided in Section 18(b) incorporated therein that every maintenance-holder whose maintenance was a charge on the estate vested in the State Government should notify to the Claims Officer his claim for maintenance-allowance which he was entitled to receive therefrom. Section 25 of the Act read with the rules framed thereunder provided that the Claims Officer should determine the claim of each maintenance-holder in the estate vested in the State Government having regard to the proportion that the net monetary allowance that was being received by the maintenance-holder bore to the net income of the vested estate as computed under Section 27. The Orissa Estates Abolition Act, 1951, therefore, not only protected the interests of the Tankha-holders whose Tankhas were permanent, hereditary and secured by a charge on immovable property comprised in the vested Zamindari, but recognised their rights to claim a proportionate share of the compensation money payable to the outgoing Zamindar of the vested estate and laid down also a detailed procedure for considering and determining the exact amount of compensation payable to them out of the total compensation computed in regard to the entire vested estate and payable to the outgoing Zamindar for acquisition of his Zamindari. The still-living grandsons of Banshagopal Nandey whose Tankha was made a charge on the Kujang Estate comprised in Touzi No. 14 of the Cuttack Collectorate in the State of Orissa fully availed of this advantageous situation created by "The Orissa Estates Abolition Act, 1951", and lost no time in filing a number of claim cases in the Court of the District Judge of Cuttack-Dhenakanal in the State of Orissa. The claim cases were filled separately by each claiment. Some transferees, who had purchased either in whole or in part some share of the Tankha inherited by some among six sons of Banshagopal Nandey, also joined hands with the claimant-grandsons and filed claim cases separately. The

m in each case was strongly opposed by the Raja of urdwan.

Two very important issues among others, were framed and both were decided in favour of the claimant-petitioners.

(1) Is the alleged maintenance a charge as contemplated under Orissa Estates Abolition Act ?

(2) Is the alleged charge enforceable against the compensation money available for the estate in question ? If so, to what extent ?

The claims in all the cases, where the claimant petitioners happened to be the direct lineal descendants of the original grantee of the Tankha granted by the Burdwan Raj, were upheld and decreed in their favour, the transferees, claiming under-transfers made before the passing of "The Amended Transfer of Property Act, 1929, were treated on the same footing as the direct lineal descendants themselves and the cases filed by these transferees were also decreed in their favour. Only two cases, where the transfer under which the claim was made took place after 1929, were dismissed. Burdwan Raj representing the opposition party preferred an appeal to the High Court of Orissa against the judgement and decree passed in the lower court. It was revealed in the judgement and decree thus appealed against that the amount of compensation computed under Section 27 of "The Orissa Estates Abolition, 1951", and payable to the outgoing Zamindar of the Burdwan Raj Kujang Estate in Orissa was even less than a lac of rupees and that the decretal dues payable to the decree-holders out of this amount of compensation did not exceed Rs. 5000/- in any case.

A review of the net result of the action taken by a handful of Tankha-holders in seeking a legal remedy through a court of law thus clearly showed that their action did not help them much materially although they got some sort of relief, however small, for the loss of their Tankhas which they used to receive before the abolition of Burdwan Raj Zamindari in Orissa.

CHAPTER IV

THE PARASITIC LANDLORDISM

Prof. Myrdal has designated Indian Land Tenure system developed during the nineteenth century as 'implanted feudalism' and 'parasitic landlordism'.[1] He considered it to be a retrogressive agrarian structure which acted as built-in-depressor. The hierarchy of farming rights developed by the subinfeudatory process of leases and sales of leases of intermediate tenures was definitely not suited for capital formation or technological change. Even an ardent supporter of Permanent Settlement like R. C. Dutt could not but notice 'the extortion of the Zamindars and their underlings', the extension of cultivation leading, not to the wealth of the cultivators, but to the growth of a 'class of impoverished idlers, the Zamindars with a two-anna or one-anna share of the ancestral estate.'[2] In the later years of his career in the Civil Service, R. C. Dutt championed the cause of the Permanent Settlement advancing his two arguments[3] : first, 'it had benefitted the whole agricultural community', 'the entire peasant population shares the benefit and is more prosperous and resourceful on account of this measure' ; and second, it had 'afforded a protection to agriculture which is virtually the only means of the nation's subsistence' ; it had 'saved the nation from total and disastrous famines,' though he had *Bankim's Bangadesher Krishak* before him where Permanent Settlement was condemned and raiyatwari settlement was advocated. But in the early years of his civil service career R. C. Dutt perceived the nature of the 'idlers' and 'parasites' more clearly in his *Peasantry of Bengal.* With his characteristic clarity he described : 'We may again divide the peasantry who hold land under Zamindars or talukdars according to the nature of the holding. First comes the *patnidar,* generally a man of considerable substance and holding on fixed rent under the Zamindar. It is not in every

village that a *patnidar* is to be found. The patnidar often sublets land to *Durpatnidar* who may sublet so to the *Sepatnidar*, and so on to the fourth and fifth degree. Next to the *Patnidar* in importance aud rank are the *istemrardars* and *mukararidars* who are often called mourusi *gantidars*. The difference that exists between these three is is very slight and often only nominal. They also hold land on fixed rent and are generally men of considerable substance. Like a *Patni*, a *ganti* is hereditary and transferable, and the rent payable is not liable to enhancement. *Gantis* may also be held for a stated period of time, in which case they resemble leases or *izaras* in respect of rights conferred'.

'The *izaradar* holds under the Zamindar or talukdar and sublets to the raiyats keeping a margin of rent for himself for his trouble and risk in connection. This tenure is generally unpopular with raiyats as the izaradar, always anxious to widen the margin aforesaid, if often more harassing to the raiyats than the Zamindars who would have been had they taken rent direct from the raiyats. The izara is again sublet to *dur-izaradars* and *se-izaradars*. The rent of land has so much increased since the Permanent Settlement that a host of outsiders have come in to share the profits which Lord Cornwallis reserved for the zamindars alone'.[4] Thus the phenomena of subinfeudation was very critically noted by R. C. Dutt in 1874, but, was glossed over in 1908. In 1924-25, the Indian Taxation Enquiry Committee also noticed this parasitic nature and observed that the landlords turned into mere rent-receivers 'living on proceeds of another's labour ; as a class they benefitted from from increased rents but paid a comparatively small part of their surplus towards the upkeep of the state'.[5] In fact, parasitism distinguished the Bengal type of landlordism even from the Japanese type, the latter being marked by some degree of enlightenment and responsiveness to agricultural development.[6]

The Hailebury College established and run by the East India Company to educate and train up boys who would grow to be the future administrators in India appointed Thomas

Robert Malthus as their teacher of political economy.[7] And three of the tenets of Mathusian teachings shaped the minds of the rulers in India. The first one was his definition of rent ; 'that portion of the value of the whole produce, which remains to the owner of the land after all the outgoings belonging to its cultivation of whatever kind have been paid, including the profits of capital employed estimated according to the usual and ordinary rate of agricultural produce.' The High Court accepted this definition[8] and on this basis decided that all increase in the value of the produce can be reaped by the Zamindar by raising rent to that extent. In his second teaching he gave un ethical and sociological support to subinfeudation and thereby helped the growth of intermediaries between the Zamindar and the raiyat. Malthus was convinced that the best society was the one dominated by a large middle class not only because 'the middle part of society are most favourable to virtuous and industrious habits, and to the growth of all kinds of talents, but also because even a relatively small increase in their expenditure, on extra child, would endanger their soclal status.' The third teaching was his famous discourse on the importance of consumption expenditure by the landlords, whom Adam Smith and Ricardo considered as unproductive and therefore conducsive to non-growth.

Though no account of expenditure pattern of the Burdwan Raj Family is available, yet one can guess the ratios from the data provided by Dr. N. K. Sinha[9] for Moysadul Zamindars' estate. Of the annual income of Rs. 92,000/-, Rs. 28 to 29 thousand was spent on religion and charity, Rs. 15,500/- on relatives and "dependents", Rs. 4,800/- on maintenance, Rs. 24,000/- on servants, Rs. 2,800/- on house expenses, Rs. 2,900/- on clothes, Rs. 1,500/- on bronze ware, Rs. 1,500/- on keeping elephants, horse stables and camels. This total of unproductive expenditure exceeded Rs. 82,000/- or almost 90 per cent of the Zamindar's total income. The productive expenditure was Rs. 3,800/- on Zamindar's "own farms" ; Rs. 1,500/- on "repairing of boats" ; Rs. 69 and 10 annas on maintenance of bridge ; Rs. 154 and 7 annas

on labourers. These ratios may be considered as typical and also applicable to estates like Burdwan. Since it was a bigger estate, in each case the absolute volume was much higher. Apart from such items, the Burdwan Raj had 13,000 paiks who had to be paid each month. The ratios and items of consumption by the Zamindar set the pace for the Patnidars, who in their turn set examples for the Dur-patnidars, and who again for the Se-patnidars, with declining absolute volumes along the hierarchical lines.

One is left with the impression that the Zamindari system in Bengal, to the extent to which it was in the hands of the privileged, usually Brahmin castes of the Hindu community in 1780s, served as an instrument for redistributing the agricultural surplus-product among the nobility. The Muslim Zamindars did not also differ from this pattern of consumption. The Zamindar himself undoubtedly enjoyed the leading status, and his duties in maintaining his caste entourage were exercised by him with sufficient responsibility. The maintenance of this 'partially ideological and partially parasitic elite ruled out the formation of any sizeable fund of productive accumulation, even within the limits of feudal economic activity'.[10]

Thus the surplus-product of the agrarian economy appropriated by the Zamindars and all the grades of subinfeudatories taken together was converted into articles of consumption by the landowners themselves, their followers, servants and the priests. While a small portion of this demand was met by the local artisans, the large segment was catered by imports, all to the benefit of English capital. 'In either case, the demand was mainly for consumer goods, so that only a small part of the feudal rent was embodied in the implements of production.'[11] For all the distinctions in the size of the property, land-holding and farm, none of the main groups of the agricultural population in Bengal had outlays on implements that would constitute on important item on the expenditure side of their budget. With the surplus of manpower, there was virtually no incentive to improve

techniques. Productive accumulation was insignificant or went almost exclusively into simple reproduction. All this intensified the tendencies towards stagnation in agriculture.[12]

Thus the redistribution of rent under the control of the Zamindari landed estates tended to prolong the historical being of the socially conservative and economically parasitic elements of Bengal society consisting of the retainers, the countless 'relatives', priests, big and small tax-collectors, watchmen and guards. In the areas under the Permanent Settlement there was no disbandment of the feudal military retinue, an important condition for primitive accumulation in the social and purely financial sense. The countless idlers continued to consume the surplus product produced by the cultivators, without feeling any (let alone imperative) need for a leap from one (feudal) to another (capitalist) formation.

The fiscal hierarchy developed through decades of subinfeudation mostly corresponded to the social strata of the Bengali Society. Zamindars came from the upper castes, the patnidars were also in general from the higher castes than those of dur-patnidars and so on. Fiscal and social hierarchy more or less resembled each other.

A study of Burdwan and Bishnupur shows[13] that the Zamindars were eager not to encourage 'others' or 'outsiders' to enter into their close preserve. 'The outcome of the public sales in Bishnupur seems to suggest that in organised Zamindaries possessing the characteristics of a 'kingdom' (Raj), outside adventurers—in this case native capitalists from Calcutta—were not in the best position to convert auction-purchases into effective rights. Families of standing, wealth and influence, like the house of Burdwan, stood a much better chance of making their auction-purchases effective. Jaynatayan Ghosal, a big capitalist of Calcutta, who had lent money to Damodar Singh, tried to take over Bhitarjote mahals in satisfaction of his claims, but without success (in 1787). Other outsiders, such as Durgacharan Pakrasi of Calcutta and

Kashinath and Biswanath Banerjee, purchased Bishnupur mahals at public auction, but could not take effective possession. This failure was due to the stiff resistance of the Bishnupur family, which made it impossible for them to collect revenue.' She also cites[14] the complaints of the Zamindari new-comers of the East India Company, who said that the former land-lords, gathering as many as 2000 followers, raided their estates, burnt down villages, dispossessed and drove away the raiyats and looted the tax money. As a result, Zamindari estates were redeemed by their traditional rulers for a mere trifle. Even after Permanent Settlement there were small-scale feudal wars between the Rajas of Bengal and their talukdars for the possession of some estates.[15]

The Permanent Settlement in Bengal was to the advantage of the local gentry, the smaller aristocrats as they could turn themselves as Patnidars. 'The Permanent Settlement laid the basis for the independence and consolidation of the smaller local gentry who had formerly existed as a subservient class to the big Rajas and Zamindars. With the creation of a vast number of small landed properties carved out of the regional Rajas, it was the local gentry rather than the merchant class of Calcutta who were in the most favourable position for acquiring the permanently leased-out revenue-collecting rights. Beneath these high-caste petty revenue-paying proprietors, there continued in occupation of the land dominant groups of village-landlords who commanded the labour of poor and landless villagers for their fields. By putting these village landlords in the category of 'tenants', the Permanent Settlement created a perpetual tension between legal fiction (i.e. the pronouncement that the Zamindars and talukdars were the 'landlords') and economic reality (i.e. the fact that jotedars and mandals actually controlled the most profitable agricultural lands in their villages) which provided much of the driving power behind the processes of change in Bengali rural society down to the abolition of Zamindari in the 1950s.'[16]

The most important effect, of course was on the tenants and no less authority than the Indian Finance Commission had to

observe[17] : 'Nothing could be further from the letter and spirit of engagements under Permanent Settlement that the landlord should throw off all the responsibilities towards his tenants, and constitute himself a mere annuitant leaving another person having no permanent connection with the estate or the tenants on it, to wring the highest possible from them.'

In theory the tenure-holders had to collect rents on the basis of rent-rolls provided by their lessors and the difference between the amount of the raiyati rental and the *patni rental* was their profit. They were not authorised to enhance rents or eject occupancy raiyats, especially the Khudkhast ones, holding land since the days of Permanent Settlement and earlier. In practice, however, these restrictions were meaningless. There was no deduction from the rentals of patnidars or of Durpatnidars or of se-patnidars to provide for the cost of collection and to allow a decent margin to them, they had to realise illegal cesses and adopting all sorts of means to earn a handsome profit. Prof. Amalesh Tripathi rightly pointed out[18] that the growing income from land was absorbed by the unrestrained rise in rents : 'The peasantry lost the margin of profit which was rightfully theirs. Worse still, Zamindars, talukdars and middling farmers turned money-lenders as the spread of money-economy and increase of production raised the need for rural credit.' Though, in theory again, the Zamindars reserved the right to intervene in case of extortion or ill-treatment, the legal history enshrined in the volumes of court cases does not contain a single instance when a Zamindar filed a suit in favour of an occupancy raiyat against the enhancement of rent by the tenure-holder.

The intermediary system proved to be an obstacle in the way of acquiring occupancy rights by raiyats. The description of W.W. Hunter with regard to Champaran is typical and representative : 'Hardly any land in Champaran is held by tenants with a right to occupancy under act of 1859. The principal cause of this is the almost universal custom of letting villages in farm for shrot terms. Very few land-holders let

their lands to the raiyats direct, but farm them out to thikadars (lease-holders) for five or seven years. When the term expires, the landlord as a rule demand an enhanced rental from the lease-holder and the increase falls ultimately on the raiyats, either in the shape of a higher rent per acre or by addition of waste lands to their cultivation for which rent is charged, or where there is no waste by exacting rent from some fictitious land commonly known as kaghaze zamin, i.e. paper land. It thus happens that only a few raiyats are able to hold their lands uninterruptedly for twelve years at the same rate. Only raiyats of a superior class received pattas which when given are generally the pretext for exacting salamies.'[19] With the sale of a patni taluk, the new patnidar must have a new patta contracted with the ryots and with every such sale and new ownership, the old pattas, even if they did exist, were overthrown and new ones, if they were given, were made only on higher rents or with salamies. And in this atmosphere of uncertainty and non-enjoyment of a fair share of the produce, the occupancy raiyat hardly had any incentive and resources to invest in land. The Government admitted this only as late as 1876-77 after almost a century of subinfeudation, when it observed[20]: 'There can be no doubt whatever that the combined influence of Zamindars and ticcadars has grounded the raiyats of some parts of Behar down to a state of depression and misery. The majority of them probably, do, as a matter of fact, possess rights of occupancy, but owing to change of plots and subjection of putwarees to the Zamindars, they are unable to produce legal proof of this.'

Most of the *patnidars*, *dur-patnidars* and *se-patnidars* resorted to money-lending. The fixed land tax on the one hand and absence of any new investment channel on the other inevitably tended the native capital into land-ownership and money lending. Capital accumulated through usury or trade did not bring it into conflict with the Zamindars. The savings went to patni or dur-patni ownership and thus became a cooperant with landlordism. Tripathi points out[21], 'The Union of the Zamindars and the money-lender in the same person was an

unmitigated disaster for the country's economic development. It deprived industry and trade of capital and it shackled agricultural improvement by taking away the only incentive before the peasantry.' With Zamindari rights in their hands they could exert enough pressure to realise the debts and to charge the maximum possible interest. While some of the European tenure-holders started rice-milling, sugar production and indigo cultivation, the Indian tenure-holders attached themselves mostly to usury, trading and rack-renting. Most of them went for acquiring landed properties. Some of them turned grain merchants and went on trading with the marketable surplus of the producers. None spent for investment in irrigation or improvement in agricultural techniques.

One cannot refrain from quoting Marx who analysed the pre-capitalist relations and referred to usury and mercantile capital and noted[22]. 'Usury centralizes money wealth where the means of production but attaches itself firmly to it like a parasite and makes it wretched. It sucks out its blood, enervates it and compels reproduction to proceed under even more pitiable conditions.' According to him, the 'essential prerequisite' of usury is small scale production; usury 'paralyses productive forces'. The credit system 'develops as reaction against usury'; it signifies the subordination of the interest-bearing capital to 'requirements of the capitalist mode of production'.

Even if all the layers of intermediaries could resort to money-lending the most vicious were those intimately connected with the cultivators. The rent-receivers in the lowest rung of the ladder could advance croploans and could earn higher interest with more ease than those operating in the upper strata. With rise in grain prices the croploans became more interest-bearing, as also more profitable. The last layer intermediary's residence in the village, within the immediate vicinity of the needy peasants, his personal grip over the debtors made him relatively more usurious than the upper layers of the revenue-farmers. Even the big raiyats who combined subletting with usury and crop-sharing (barga) became gradually more

wealthy than his superior rent-receivers. The lower rungs could thus appropriate more of the surplus than the upper rungs, in most of the cases the vassal became wealthier than the lord. The comparative advantage of early start in English education by the children of the upper rungs saved them as by that they could enter into services and three independent professions like Medicine, Teaching and Law. Resting on the same fiscal base they sometimes tried to shift elsewhere, yet as the landlordism was still supposed to be specially honourable, they could not totally shake it off their shoulders. Thus the differentiation among the rent-receivers went on implicitly as also explicitly. The big 'occupancy-raiyats' who were to some extent protected by law, at least from 1859, became richer by combining all four ; personal cultivation, extracting half or more, sometimes more from the bargadars, usury, and grain trade. When sometimes 'raiyats' also sublet again at fixed money-rent they became in economic reality as good as one of the rungs in the subinfeudatory ladder, a mere annuitant, a rent-receiver, though the legal fiction of calling him an 'occupancy raiyat' continued. The form and the content continued to differ throughout the century when such differentiation were in continuous evolution. And the tenure-holders in Bengal who mostly belonged to upper castes, went on shifting themselves away from agricultural activities in accordance with the value-scale determined by social milieu, never taking any active interest or particlpating in productive labour. Vertical advancement and placement in land-owing hierarchy became one of the driving force and incentive. While subinfeudation institutionalised this hierarchy, deepened and intensified the knots and ties and all such intricate links in social stratification retarding the speed and tempo of social and occupational mobility, yet there were subterranean currents underneath the still water-surface, where the relative position of the families, classes and subclasses were in continuous flux. The economy and the society thus was more stationery than static.

The situation was not the same everywhere. In case of small and petty 'occupancy raiyats' the intermediary system

went on depriving whatever meagre surplus they could produce. Extortions from these small and petty raiyats resulted in gradual depletion of their capital and pushed them first into bargadari and then into wage-labour. Even if a small raiyat could save they felt no incentive to do so as with every rise in productivity similar or more rise in salami or abwab were pressed for.[23] The fiscal machinery and the usury were like two strong hands which pushed him incessantly beneath the subsistence level till his respiration was choked. His 'occupancy-raiyatdari' was not tolerated for long by this combine of intermediary land-lordism and usury blended in one.

The process of subinfeudation and the growth of a middle class as one of its consequences have been very aptly described by Mr. C. D. Field.[24] 'It became at an early period a common practice for the holders of Taluks to sublet their lands in whole or in part to inferior tenants on conditions more or less similar to those on which they themselves hold of the Zamindar. These undertenants occasionally sublet to others in the same way, and so it has come to pass that there are several classes of middlemen between the *Zamindar* and the *Cultivator*. Considerable sums are paid by way of fine on the creation of both the parent and subordinate taluks. Men who do not like to part with the *status* of the *zamindar* will readily raise enough money by allowing the proprietory right to be carved up into estates of minor value, the whole substance going into the hands of others, while the name alone remains to them. Inferior holders of tenures follow the same practice, and thus a very considerable class of mere annuitants has been created in Bengal, who have no interest in the land and its improvement. These annuities represent an increase of revenue which might have gone into the coffers of the State. One of the social results of the loss of revenue, has been the creation of considerable Middle Class which in all probability would not otherwise have sprung up so rapidly in a country possessing little or no manufacturing industry'.

'This class have readily availed themselves of the educational advantages of our system. The great difference between Bengal

and the North-Western provinces in respect of a large educated middle class is doubtless due to the difference of the system of settlement. Capital is necessary to the existence of a middle class ; and, where, there is little or no trade or manufacturing industry, capital available for expenditure without diminishing the principal can only exist in the shape of an annuity derived from land or from the funds.'

'Opinions differed as to the policy of creating such a class. At the commencement of our rule, it was deliberately proposed as one the great objects to be accomplished. Such a class had made England a great nation—institute a similar class in India and similar results will follow. At a later period this policy was doubted and to some extent disaproved. Mr. Canning, then President of the Board of Commissioners, in a letter addressed in 1817 to the Chairman of the East India Company, stated four points upon which the Court and the Board were unanimous. One of these was,—That the creation of an artificial class of intermediate proprietors between the government and the cultivators of the soil, where a class of intermediated proprietors does not exist in the native institutions of the country would be highly inexpedient." But again in a Despatch (No. 14 of 9th July 1862) from the Secretary of State it was said, that "it is most desirable that facilities should be given for the gradual growth of a Middle class connected with land, without dispossessing the peasant proprietors and occupiers. It is believed that among the latter may be found many men of great intelligence, public spirit and social influence, although individually in comparative poverty. To give to the intelligent, the thrifty and the enterprising the means of improving their condition, by opening to them the opportunity of exercising these qualities, can be best accomplished by limiting the public demand on their lands. When such men acquire property and find themselves in a thriving condition, they are certain to be well affected towards the government under which they live. It is on the contentment of the agricultural classes, who form the great bulk of the population, that the security of the government mainly depends. If they are prosperous, any

casual out break on the part of other classes or bodies of men is much less likely to become an element of danger.[25]

Writing at the beginning of this century, Field exasperatingly remarks, 'These conclusions have been scarcely justified by some of the emanations of the Native Press, which is an offset of the Middle class of our creation and education.' It is highly interesting to note the change in the attitude of the British administrators in this respect. In 1817 the loss of revenue made it 'inexpedient', in 1862 after the Mutiny it became 'most desirable' and in 1912 the rising tide of nationalism made it 'scarcely justified'.

One of the serious consequences of subinfeudation was the loss to the state and to the country of income from the underground wealth of coal, mica and such other minerals. The foreign managing agents intending to work the coal obtained leases not from the government, not even from the Zamindars, but mainly from subinfeudatories, who owned the rights of the Raniganj and Jharia fields. The state did not attempt to establish its rights to the mineral resources in these areas, since such a course was thought inexpedient. No case was opened on behalf of the state. Land-tax and its punctual collection dominated the whole scene and the natural wealth was left in the hands of private British capital. Even as late as 1880, the Secretary of state for India in a despatch "I agree with you that the indirect advantages resulting from making available the mineral resources of India are likely to be more valuable the state than any direct returns ; and I therefore consider that it would not be desirable to enforce that right of the state, supposing that such a right can be established in the permanently settled estates".[26] So the British entrepreneurs were left to deal with the Zamindars and the sub-Zamindars. The absolute lack of interest, knowledge or intelligence which these subinfeudatories showed in the mineral assets of their estates was appalling as also disastrous. These intermediaries gave leases for periods upto 99 years (long leases) or even upto 999 years (perpetual leases), on receipt of a lump sum payment known as *salami*. One British administrator has reported a story of one

of these Zamindars who signed a number of leases without knowing what he was doing. His corrupt manager told him that the gentlemen concerned had heard of his beautiful handwriting and were eager to have a specimen of his signature.[27] No royalty was sometimes demanded. Sometimes the royalty was nominal. Sometimes again the whole deal was contracted only with agreement for nominal or yearly rent-payments.[28] About 60 per cent of the coal areas were covered by such leases [29] These tenure-holders "were unable to resist the lure of large sums of ready money. Valuable properties and rights were parted with for comparatively small considerations, and the future was left to look after itself, little or no provision being made for the proper working of the properties or the exercise of the leased rights.[30] Only in small number of cases the leases did stipulate conditions for the proper working of the mines. In practice, however they were all ignored and the tenure-holders acquiesced in such conduct before the politically powerful foreign entrepreneurs. The Coal Fields Committee observed : "In practice, however, we find that these provisions are inoperative. No landlord employs a competent agent to inspect his tenants' mines and to safeguard his interests, any supervision exercised being confined to the prevention of fraudulent evasion of royalty.[31]" Not even making arrangements for the supervision of the working, these land-holders were not even alive to the interests of their own properties. Ignorance, indolence and incapacity of these tenure-holders came as a boon to foreign capital and leases were made out at throw-away prices. Mr Treharne Rees, who reported to the government of India on the methods of coal mining of India (to consider which report the coalfields committee was appointed) observed : 'It has further come to my notice that in the case of large tracts of coal property, the areas let off for working by the landlords have not been so arranged as to conduce to the economical working of the estate as a whole, but rather with the object of receiving as much as possible by way of salamis'...[32] Mr Rees in his report arrived at the conclusion that 'in a large number of properties the colliery has been worked chiefly with the

object of producing outputs at the earliest possible moment, without due consideration being given to the most efficient methods of laying out the collieries for the most distanct future.'[33] It may be worthwhile to quote from the Report :

"*Interrogatories to landlord's representative's Question 7 :* Do you know personally of any instance in your estate or elsewhere in which coal has been won with a view to speedy profit, with the result that damage has thereby been done to other unworked coal and loss caused to landlord's future interests ?" Replies were all in the affirmative.[34]

One must remember that the idea of the State owing underground rights were not an unknown idea in those days. After 1765, during the days of Dewani, in 1774, a firm under the name of Sumber and Heatly presented a petition to the Revenue Council of Bengal for permission to work the coal mines of Bengal. The Revenue Council granted the lease to the Company subject to certain conditions, one of which was, "(4) that they shall not receive or grant protection to any raiyats who may desert from the farmers or officers of Government with balances due on account of the rents."[35] Most obviously the main consideration was assuring the land-revenue. No royalty was charged at all. But after Permanent Settlement in 1793, the foreign managing agents obtained leases not from the government but from the Zamindars and from the subinfeudatories. A large number of court cases resulted and even a judgement from the Privy Council became necessary through which these Patnidars established their right to lease out lands to coal companies for utilising underground resources as against the Zamindars. No court case is seen to be contested by the State for asserting its own rights for underground wealth. And these subinfeudatories were duped and cheated and forced and cajoled to part with these 'rights'. Buchanan also commented, 'Naturally those mining concerns which got control of extensive coal fields at low rates in the early days have been most successful..... This system and the dishonesty practiced on ignorant owners or lessees have resulted in certain very wasteful projects.'[36]

It may be highly interesting to note that these capitalist enterpreneurs also started sub-letting out of their leased lands. Many of the settled workers in the mines (mainly *Bauri* and *Santuals*) were attracted by the grant of land for cultivation. The miners settled on coal fields had no tenancy right, they could be ejected by the owners. The Royal Commission on Labour suggested abolition of the system : 'We recommend that, for the future, the law should prohibit the creation of tenancies with collieries as a condition of the holding. For the rendering of service was a legal obligation in return for the holding of land.'[37] It may be further interesting to note that 'many of the raising contractors were formerly landlords who had a certain amount of influence on the villagers whom they brought to the mines for working there.'[38]

Bengal Land Revenue Commission[39] discussed in detail the evil effects of subinfeudation : 'The development of subinfeudation has led to a revenue system of immense complexity, particularly in districts like Backerganj, where as many as 15 or 20 grades of tenure-holders are not uncommonly found. The chain of middlemen has shifted from one to the other the responsibility of collecting rents, and looking after the interests of the tenants. The system has severed the connection between the Zaminders and the raiyats in estates where subinfeudation exists, and has defeated the intention of Lord Cornwallis to establish a landlord and tenant system in Bengal on the English model. It has prevented the Zamindars from fulfilling the functions which provide the economic justification for a landlord and tenant system, because with few exceptions the tenure-holders immediately above the raiyats have neither the incentive nor the capital to effect agricultural improvements. The land is nobody's concern. The Zamindar cannot today obtain an enhancement of rent, even for any improvement which he makes, and he feels that he is no longer responsibile for improvements. The responsibility for agricultural welfare cannot be fixed at any particular link in the chain between the Zamindar and the actual cultivator.'

And again (in para 84) : "One of the most serious defects

of the present system is the excessive amount of subinfeudation which it has encouraged. The margin between the fixed land revenue and the economic rent of the land has permitted the creation of a number of intermediate interests between the Zamindar and the actual cultivators which in some districts has reached fantastic proportions. The report of the Simon Commission pointed out that in some cases as many as 50 or more intermediate interests have been created between the Zamindar at the top and the actual cultivator at the bottom. This has resulted in dissipating the responsibility for the best use of the land in the national interest among a host of rent-receivers, all of whom have to be supported by the labour of the cultivator, and none of whom have either the incentive or the power to exercise any control over the use of land. It is not too much to say that the extent of subinfeudation has become an incubus on the working agricultural population, which finds no justification in the performance of any material service so far as agricultural improvements are concerned, and fails to provide any effective means for the development of the resources of the land, which is the greatest asset of the Province. The government has done far less to develop increased production from the land than the governments of other provinces. There has been little inducement to spend public money on agricultural development, when the benefit of the improvements goes into private hands.'

'Moreover, this army of rent-receivers is increasing in number each year. The census figures show an increase of 62 per cent, between 1921 and 1931, and since 1931 there has been a further subinfeudation below the statutory raiyat, which will swell the figures still more. At the same time a steady reduction is taking place in the number of actual cultivators possessing occupancy rights, and there is a large increase in the number of landless labourers..... Side by side with the growth of subinfeudation there has been the further process of the fragmentation of proprietory interests in lands. This is mainly due to the operation of the laws of inheritance and is not directly related to the Permanent Settlement. But it adds greatly to the

B. U./Zamindars/64-8

complexity of the land system and the difficulties of all classes concerned. Striking illustrations of the complications due to subinfeudation and aliquot tenures, with no provision for partition or common management, can be found in the Backerganj Settlement Report, in which Major Jack justly described the position as "the most amazing carricature of an ordered system of land-tenure in the world."

But one cannot agree with the Commission in respect of the causes of subinfeudation. The Commission was of opinion that 'the promise given by the East India Company never to alter the assessment (in Bengal) followed as it was by the gradual growth of the Zamindar's profits, encouraged subinfeudation and brought into existence of body of tenure-holders vastly outnumbering the original Zamindars'. It was generally understood and a consensus developed in the Commission that where the raiyatwari predominated, the peasant holding land on the rights of a raiyat was free from subinfeudation and/or feudal exploitation as distinct from his counterpart in the Zamindari regions, where big landed proprietorship went on subinfeudating.

The observation of the Commission was historically wrong as also the causes of subinfeudation enunciatted by it. Subinfeudation in the new form began just after the Permanent Settlement when the Zamindars could not raise rent, neither could force the peasants in paying it regularly. The surplus between the collections from the raiyats and the revenue demand was low enough at early stages, and it was in those early days that subinfeudation went on briskly. In the later years when this surplus increased the subinfeudation was almost complete and the estates were almost fully leased out to the Patnidars. The Zamindars therefore could not enjoy the fruits of the surplus much as was generally conceived.

Neither the observation of the Commission on Raiyatwari areas seems to be correct.

Sir Thomas Munro[41] in a report of August 13, 1807, in favour of the raiyatwari, argued that it was conducive to agricultural prosperity ; "because" he wrote, "every raiyat will on his own estate, be at once proprietor, farmer and labourer.....

it is better calculated to promote industry and to augment the produce of the country, because it makes more proprietors and farmers and fewer common labourers than the Zamindary or the mootandary scheme ; because the raiyat would be more likely to improve his land as a proprietor than as the tenant of a Zamindar.....the small proprietor being a better manager and former and more immediately interested than the great one in the cultivation of the land, would bestow more pains upon it and make it yield a more abundant crop the remission going at once to the raiyats it would improve the circumstances of the class of men from whom the revenue is principally drawn and would enable them to raise a greater quantity of food...'

But this proprietorship of the raiyat was very soon lost to to the traders and money-lenders. As a result, a new class of landlords began to rise in these areas dispossessing the actual tillers of the soil of their proprietorship. The Bombay Government in a statement to the Famine Inquiry Commission observed[42] : 'The tenant who cultivated land on lease which is renewed annually is not sure how long the lands would remain in his possession as the landlord has the power to resume that land at the end of the year after giving three months' notice to the tenant. The tenant has thus no permanent interest in lands. In many cases, lands are based on the crop-sharing basis. If the tenant sows improved seed or puts in good manure or extra labour to improve the land, half of the increased produce so obtained at his cost goes to the landlord, and the tenant does not get a proper return on his labour and enterprise. The absentee landlord cares only for his annual rent and takes no interest in the improvement of his land or the introduction of improved methods of cultivation.'

The raiyats under raiyatwari came from 'the high caste elites, the rayalu or leaders of the village.'[43] There were 'as many intermediaries between the raiyat and the Governor-in-Council under the raiyatwari as under the Zamindari system.' The gentleman farmers in the England could 'have been cultivators in the same sense as some raiyats.'[44] Raiyats started subletting their lands and became converted into rent-receivers.

All that happened in the raiyatwari was that the Zamindar was replaced by the state as the sole authority over the working of the agricultural economy. And the state simply kept up the tradition of the Zamindar. Like him the state also did not participate in the production process. Like him again, the state went on enhancing rents itself, where previously it was supporting the Zamindar doing so. As a coercive power to force revenue collections it was no less active than the Zamindars.

According to contemporaries, the degree of the exploitation of the peasants was approximately the same in both cases : until the mid-19th century the feudal rent or revenue rent was equal to about half the harvest, while in many cases it was even higher. In raiyatwari areas the land revenue was legally fixed at half the the value of the total harvest, but in fact it was much higher.[45] In the North-Western Provinces the 1822 Regulation fixed the land revenue at 86 per cent of the net assets, i.e., of the land owner's net income. In the Zamindari areas the size of the taxes paid by the peasants to the Zamindar was not fixed by law. The exaction of the maximum surplus product by essentially feudal methods was also expressed in the fact that the *land revenue rates* and, frequently the *rent as well* depended on the type of crop. In other words, the assessment rose if the peasant introduced some improvements on his land and started growing more valuable crops.

Under each of the three basic land revenue systems (Zamindari, Raiyatwari and Villagewari) the *economic substance* of the status of the raiyats were identical and changed in one and the same direction. There may be different forms of land-taxation, but the socio-economic content under these forms were not different. This content was moulded by the (a) intensification of non-economic compulsion and (b) the growth of subinfeudation. The non-economic compulsion was put into effect with all the power of the colonial state machine directly (the raiyatwari areas) or by giving the feudal landowner with feudal rights over the person and property of the peasants (the private prisons and methods of torture of

the Zamindars of Bengal). In both cases the peasants were reduced to serfdom, although this tendency was not observed in the same degree everywhere. Torture to exact rent or revenue were common-place. in raiyatwari areas the raiyat was not only actually but to a certain degree, also legally bound to the land, and the character of land cultivation was coercive. The situation was practically the same in the Zamindari areas. In the Madras Presidency the law stated that a "wealthy" raiyat could leave his land only if he found another raiyat to replace him or agreed to occupy some other land taxable to the same amount as his previous land. (b) Subinfeudation was facilitated by the legal framework, the law of free alienation of these estates and the rule providing for their immediate auction to the highest bidder in the event the rent was not paid in time (the Sunset Law and the Patnisale Law), and in the Raiyatawri areas recognising the raiyat as a proprietor who can sublet, mortgage or transfer by gift or sale. Thus the state-machine and the laws facilitating transfer of revenue-farming rights helped to evolve the socio-economic content, though the forms of land taxation continued to differ under these three basic land revenue systems.

What then was the impact of subinfeudation on the nature of private property evolved by the British ? It is generally believed that private property of the British type was introduced into India by the rulers of the East India Company, who transformed the tax gatherers of the defected local dynasties into near replicas of English landed gentry, and the actual cultivators into their tenants. But, if we re-examine the records a bit more closely, we will agree that this (the establishment of private property in land) was precisely what Cornwallis and his successors did not do. Like the Mughals before them and the Guptas and the Mauryas before the Mughals, the British insisted on the right of the imperial power to the first share of the fruits of the soil. With physiocratic ideas on the one hand, and the pressure of population on land due to "de-industrialisation" on the other, almost entire surplus from cultivation was taxed to the fullest extent. But this type of

claim by the state on land was already centuries out of date in the then England itself where capitalism has advanced far in agriculture. Such a claim belonged properly to a stage of economic development where there was in effect, no other source of state revenue. The key fact about all the British land settlements of the eighteenth and ninteenth centuries, whether Zamindari, raiyatwari, mahalwari, talukdari or malguzari, whether permanent or temporary, was that the new rights in the land were all made invariably subordinate to the rights of the State. Cornwallis insisted on fixity of tenure for the raiyat, contending that it involved no incongruity of proprietorships.[46] 'Neither is the privilege which a ryots in many parts of Bengal enjoy,' he wrote in a minute of February 3, 1790, 'of holding possession of the spots of land which they cultivate, so long as they pay the revenue assessed upon them, by any means incompatible with proprietory rights of the Zamindars···To permit him to dispossess one cultivator for the sole purchase of giving the land to another, would be vesting him with a power to commit a wanton act of oppression from from which he could derive no benefit.' To no holder was granted the exclusive right to occupy, enjoy, and dispose of land which, in practice, was the hall-mark of western private ownership. Without this quality of exclusiveness, real private property could not be said to exist. This was the main contradiction involved in the new system.

Some of the rights normally associated with private property in land (e.g. transferability, mortgageability, inheritability) were indeed accorded to the new "owners". But their privileges were restricted by the simultaneous recognition of rights both superior and inferior to their own in the same land. The state, as a super landlord, claimed a share of the rents, while the actual tillers continued to exercise a traditional claim to occupancy. Marx wrote : 'If any nation's history, then it is the history of the English management of India which is a string of unsuccessful and really absurd (and in practice infavour) experiments in economics. In Bengal they created a caricature of English landed property on a large scale ; in south-eastern

India a caricature of small allotment of property, in the North-West they transformed to the utmost of their ability the Indian commune with common ownership of the soil into a caricature of itself'.[47]

The security of tenure laid down for the raiyat also prevented the Zamindar from forcing improvements on his land. The raiyat grew only that much produce which was necessary to meet his rental obligations, with very little surplus for himself. The Zamindar, debarred by the proclamation to raise rents, became disinterested in intensive and improved cultivation. 'The Zamindar was still to pay nine-tenths of his rents to the exchequer ; the raiyat was still to be protected in the perpetuity of tenure, and was in fact to be in a more peculiar, and as far as the interests of agriculture are concerned, more important sense than his anomalous landlord, the owner of the soil. The quantity of stock, the distribution of labour, the choiee of crops, were still to be left to the resources and discretion of the raiyat for ever. There was no principle in the new arrangement that was calculated to make that rank and unprofitable underwood give place to trees of majestic growth and various usefulness.'[48]

Superimposed on this competing rights of the State, the Zamindar and the occupancy raiyats, there developed some more additional rights, each one conflicting with the others. The rights of the Zamindar conflicted with the patnidars, those of the patnidar's conflicted with those of dur-patnidars and those of dur-patnidars with the se-patnidars. Subinfeudation thus made the property relations more ludicurous. No property was held with exclusiveness, any use, sale or inheritance required rent-payments to some one, concurrence of the second, salami to the third, abwab to the fourth, nazrana to the fifth, and each one sharing a part with some others. While every layer claimed some right, none could claim the whole.

In such circumstances the plots of land were engrossed with legal complexities and untoward incumbrances. The land could not rise in value to the extent it was expected. Raising the value of property was one of the aims of Permanent Settle-

ment which remained unfulfilled. In arguing for the permanancy of the settlement before its enactment, Mr Thomas Law had said that the banking community of London was asking for it. Because, it appeared, that they hesitated to advance loans to the Zamindars without proper security to recover them, since the Zamindars had no permanent property. Mr. Law contended that restoring them to their property permanently would induce confidence in the bankers to lend them money for cultivation.[49] The extremely high Land-Tax on the incomes of the Zamidars during the settlement and the property rights of the Zamindars conditioned by those of the raiyat devalued the propertiness of the Zamindari estates by reducing its mortgage-ability, one of the attributes of real property. Banking circles therefore found it extremely difficult as also unwise to finance them. Bank money went to trade and did not flow towards agricultural production. Subinfeudation reduced the 'propertiness' still further and no instiutional finance was ever attracted towards cultivation in this situation.

The atmosphere of sub-letting was thick and was found to be so much so all pervading that even the British administrators got attached to the system. Even when the Zamindaris were taken over by court of wards the system of sub-letting was not given up and the *thikadars* were recognised as a part of the fiscal and administrative machinery. A particular case-study would show how the administration had to accept sub-letting even under the government management. With the assumption of the charge of Bettiah Raj by the court of wards the question of intermediary tenures came up before it. Though, theoretically, the government was in favour of the abolition of the system of farming out portions of the Zamindari to tenure-holders, it found this difficult to do so in practice for five different reasons. First, the data gathered from 915 villages showed that bringing them under Khas management would result in a loss of revenue to the Raj. Mr. R. W. Carlyle, Secretary to the Board of Revenue wrote to the Revenue Secretary of the government of Bengal: 'I am to submit herewith.....a statement showing the rent received by tempo-

rary thikadars and the rent paid by them to the estate. It will be seen that the thikadars pay over a lakh more to the estate than the gross rental secured to them by the settlement.' A part of the loss is made by the malik's zirat in their possession :

Number of thika villages	Amount paid by the raiyats to the thikadar Rs. as. p.	Amount paid by thikadar to the the estate Rs. as. p.
915	8,45,434-7-3	9,79,573-0-0

Thus the result of direct management would not only mean a direct loss of revenue to the estate but would also materially jeopardise its position 'at any time of stress such as occured during the famine'...[50] Second, in the case of non-renewal of leases, the Raj had to refund the security money deposited by thikadars and by the end of the century i.e. Rs. 1,22,987 had to be refunded. The Raj was not in a possition to pay this sum out of its current receipts or cash in hand and the only way out to get this amount was to incur more debts and this course of action was not advisable. The Court of wards was trying to wipe out the existing debts. Third, non-renewal of leases would have entailed some immediate expenditure on the establishment of the machinery for colleclion of rent and maintenance of records. Here also the constraint was the financial position of the Raj. Fourth, the regularity of the payment of thikadari rental and salami at the time of the renewal of leases were of great attraction for the Raj. Last, the non-renewal of thika leases would have caused grave dislocation to indigo cultivation because without Zamindari rights the European thikadars would not have been in a position to compel the raiyats to grow indigo under the *assamiwar* system.[51]

It was interesting to note that the Court of Wards Manual forbade the thika leases and stressed the need for the protection

of raiyats and laid down in clear-cut terms that no one should have leases to force upon raiyats the cultivation of any particular crop such as indigo. Inspite of that the Board of Revenue maintained,[52] "The soundest policy under the special circumstances is to refuse to renew leases which have been abused, to let any reasonable safeguards to be laid down and to give farming leases for short period, so that misconduct can be punished by forfeitures ..' Board of Revenue, however, made it clear what they meant by "the abuse of leases" and "misconduct". In the case of the Indian thikadars also the government pleaded for the maintenance of the status quo : 'As regards the native thikadars, it is not necessary to imagine that they have any wish to treat their tenants otherwise than well ; but as a matter of fact, circumstances are against them should they wish to be harsh ; land is plentiful, and Nepal conveniently close, and a landlord cannot afford to tyrannise over his tenants or they wil surrender their holdings and be gone."[53]

In this situation the Court of Wards continued the system of intermediary tenures without any attempt at introducing reforms. Thika leases were renewed for a period of 7 to 9 years or in some cases 17 years. No commission was allowed to the thikadars and there was no adjustment as a result new settlement abondonment of holdings, alluvion and diluvion. The renewal of thika leases was discussed as late as in 1909 in the context of the declining fortunes of natural dye made from indigo as a result of competition from synthetic dye. The Commissioner wrote[54].....'.....in the Bettiah Raj the system of khas management will have to be very largely restored, chiefly because I do not think we shall really be able to control thikadars who, owing to the dying state of indigo, are faced by selfinterest to have recourse by various means to measures which are not for the good of the raiyats and are not able to live on the Commission given, though that may be 15 per cent of the demand. Khas management would be more expensive than the thikadari system, but properly supervised, would be much better for the tenantry.'

Board of Revenue, however, took a different line. It was not in favour of doing away with the system of intermediary tenures altogether ; rather it thought it could be reformed and made workable. The Board of Revenue directed that the tenures be renewed if the tenure-holders agreed to comply with certain definite conditions. The conditions were : 'The thikadar should explicitly agree that he will not take an agreement (satta) from a tenant for the cultivation of any crops except indigo, and a clause to that effect should be inserted in all new leases. A clause should be inserted in the lease empowering the lessor to cancel the lessee if has taken sattas for crops other than indigo. No general direction can be given that leases shall be for 15 years it shall be open to the Commissioner to grant a lease for 15 years when he considers that the circumstances of the case justify him in so doing. Whatever, may be the period for which the lease is given, the sattas taken by the lessees may be so drawn up that they expire not later than the termination of the lease, and there should be a condition in the leases empowering the lessor to cancel the lease in the event of this condition being broken by the lessee.'[55]

A discussion on occupancy-tenant or raiyat would be necessary before completion. Throughout the early British period the company and its administrators conceived a raiyat as a land-tax paying peasant. The myth and the fiction developed around raiyat conceived him as a small peasant owning the occupancy right, residing in the village where the land was situated, tilling mostly with the help of his family labour. The fiscal need of the Company was to find him out as a grass-root microunit where the surplus originated and from whom the land tax could be collected. A raiyat, therefore, according to the legal fiction, was a land-tax-paying small peasant, the man behind the plough. In the eyes of the Company the raiyat was equivalent to the actual cultivator or the peasant because the fiscal urge of the Company was to reach up to him, to search him out and to tax out a portion of his product. Never was the term 'raiyat' used as an employer of other cultivators, securing a portion out of the labour of another.

In actuality, however, a raiyat was generally not a very small peasant. He might occupy and pay rent for hundreds of acres of land. He might not be, and was not in reality, an actual peasant engaged in the actual processes of cultivation though he used to pay land-tax and therefore was legally considered to be a raiyat. An extract from the *Ain-i-Akbari* says that each year's tax receipts were paid in parts over a period of eight months. The raiyats themselves brought mohurs and rupees to the spot designated as the seat of taxes. A gold-mohur-paying raiyat was definitely a rich producer but whether he cultivated his land himself or with the help of another's labour was never mentioned in *Ain-i-Akbari*. The British officials were interested in finding out the actual tax payer and not a cultivating peasant and in raiyat they found him out. What the raiyat was doing for production at the operational level—self cultivation or Bargadari or subletting was not the concern of the Company. It had found out the fiscal unit at the lowest level wherefrom the rent could be gathered. The term raiyat therefore designated cultivators in general. It had become virtually a synonim for self-cultivating peasant.

Let us probe little deeper into the conception of raiyat. According Mr. B. Rouse, 'The Arabic word *Rayet* or *Ryot* strictly means no more than a *subject* ; and its plural *Ruaya*, which is the term mostly used in 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 person.'[56] While the etymological meaning of *Khudkhast* is self-sown (*Khood*, self and *Kashtee*, sown), by oneself, the English rulers construed it as 'subjects' residing in the village but 'not necessarily cultivators'. Sir John Shore, writing in 1789, even before the Decennial Settlement was enacted, mentioned : 'In almost every village', according to its extent, there is *one or more head raiyat*, known by a variety of names in different parts of the country, who has in some measure the direction and superintendence of the rest. For distinction, I shall confine myself to the term *Mundul* ; he

assists in fixing the rent, in directing cultivation and in making the collections. This class of men, so apparently useful, seem greatly to have contributed to the growth of the various abuses now existing, and to have secured their own advantages, both at the expense of the Zamindar, landlord, renter, and inferior raiyats,...Their power and influence over the inferior raiyats is great and extensive ; they compromise with the farmers at their expense, and procure their own rents to be lowered, without any diminution in what he is to receive, by throwing the difference upon the lower raiyats, from whom it is exacted by taxes of various denominations. They make a traffic in *pottahs*, lowering the rates of them for private stipulation and connive at the separation and secretion of lands'.[57] Even Sir T. Munro observed that 'By *occupier* I here mean not so much the person who performs the work, as him who procures the labour and directs management.'[58] That raiyats were also engaged in large scale sub-infeudation was observed by Sanjib Chatterjee in 1864 : 'But in popular acceptation, the term Ryot seems also to include some of the intermediate holders of land, and this interpretation is not wholly without ground ; for we have three classes of landholders in Bengal, viz. the Zamindar who holds land of Government ; the Talookdar who holds land of the Zamindar on a large scale ; the Ryot who holds of the Zamindar or Talookdar on a small scale. A Mouroosdar, therefore, who holds of a Talookdar only one beegha of land with right to underlet, is not himself a Talookdar, and must therefore, in the popular sense, be a Ryot. He who holds under a Ryot, is generally known as *Pata-o*, or *Corpa* or *Corffa* Ryot.'[59] Thus Ryot was taken as meaning the holder or occupier either immediately from the Zamindar, or from a Talukdar. Nowhere it meant an actual tiller or cultivator, the act of cultivation was presumably done by either a labourer on a bargadar.'

That a large section of occupancy-raiyats were not actual tillers of the soil and were big or small jotedars can be well understood by the need for and the language used in successive legislation. Francis Buchannan—Hamilton noted[60] 'jotedars'

in Dinajpur and Rangpur as late as in 1806. The land-holders were 'new man', whose lands were managed by 'agents who are oppressive.' They 'do not cultivate their fields themselves but employ people to do it for a share.' About 'one farmer in 16' was a jotedar, 'who may rent land from 30 to 100 acres'; they 'cultivate a portion themselves while the other portion is given to people who cultivate it for a share'. They had "*large capitals.*"

In South Bengal as also in East Bengal there was large-scale reclamation of wastes and jungles. And the 'howladar's of East Bengal and the 'lotdars' of the Sunderbans were in the nature of agricultural entrepreneurs. Hunter wrote[61] that the costs of reclamation in the Sundarbans were borne by those landowners, who later gave it to bargadars on crop-sharing basis. Hunter also noted that in Midnapur the reclamation of waste land led to the creation of 'bhagjote' tenure, where the tiller 'cultivates the land with his own ploughs and provides all the expenses of cultivation. At harvest time he generally retains half the produce...and hands the other half over to the landlord or superior tenant, as the case may be, in lieu of rent.'[62] In Jessore district also the jotedar was termed as raiyat and he 'never cultivates with his own hands, but sometimes has fields under cultivation by his servants'. They were 'for the most part very well off, the rent they pay being small in comparison with what they realise'.[63] In Murshidabad a Zamindar 'was himself a jotedar in respect of a portion of his own estate which he had leased out in part.'[64] In Pabna district, 'there is a class of cultivators, known as burgaits or bargadars, who cultivate land under the jotedar.'[65]

Thus there are strong reasons to believe that there was a difference between legal fiction and economic reality. Dr. N. K. Sinha[66] speaks of the privileged status of the 'upper raiyats' in 1780s, that is on the eve of the introduction of the Permanent Settlement, the 'upper raiyats' had the opportunity to shift the burden of the land tax on to the 'lower raiyats'. According to Sinha the lands of these raiyats were cultivated by hired workers, who received for this allotment 'chakeran'. One may

assume, therefore, that they were essentially that section of the rural population who were feudally exploited and worked off the labour rent on the farms of the rural upper crust.

In Hunter's description[67] Jotedar was a 'small land-holder', who sublet his lands to the tenants on a 50 : 50 basis. He also referred to the bhadralok jotedar in the 24-Parganas : 'Barga tenure is chiefly granted by Brahmins, Kayastha, and others of the upper caste'. O' Malley writes that in Darjeeling district jotedars were pleaders and men of business who have purchased the holdings as a speculation or investment.[68] Gruning writes that Jotedars in Jalpaiguri came from lawyers and Marwari traders[69], they purchased land and turned it over to bargadars for cultivation.

Most of the District Gazetteers show that these occupancy raiyats were mostly jotedars. In Dinajpur[70] district the 'holders of cultivating tenures are known as raiyats, or in local parlance jotedars'. O'Malley described[71] the Darjeeling jotedar as 'a substantial farmer representing the original reclaimer of the soil, and holding at an easy rent.' In Rangpur[72] many jotedars were 'formerly actual cultivators,' who 'have become, middlemen and have sublet their lands to raiyats at rates which are often double or more than double the rates paid by themselves to the Zamindars' : the term jotedar 'meant any tenancy held direct under the Zamindar, irrespective of size or mode of enjoyment.' In Burdwan, writes Peterson about bhag-jotedars,[73] "every well-to-do tenant usually holds a certain proportion of his land in bhag-jote generally from another tenant'. O'Malley described the Bankura system[74], 'In such a holding the tenant has the use of the land for a year or season, and pays as rent a certain share of the produce of the land. Ordinarily one half of the produce is so paid, the jotedar cultivating the land with his own cattle and plough and also finding seed and manure'. All evidences thus show that the occupancy-raiyat was some one bigger than an actual tiller and included big jotedars who used to sublet freely. The Burdwan district records also show some 'raiyats' owing several thousands of

Rupees to Raja. These Banarussy Ghoses and Budun Mitres were obviously substantial persons and could not be considered as self-cultivating small peasants, the ideal Khud khast type conceived by the British law makers.

The crop-sharing bargadari of Bengal economy and the land-sharing demesne-farming of the classical system were of course, structurally and operationally different, but the economic essence of both was singularly feudal. The decisions on crop, on investment and other details of production was taken by the 'tenant' or the 'raiyat' jotedar and not by the actual tillers i.e. the bargadars. Without making separate allotment of land for the serf, the bhag-jote or barga system made separate allotment of crops for him. The Bengal system was relatively more efficient from feudal standpoint. Allured by raising his share the Bengali bargadar went on putting intensive labour in the land and each dose of increased effort raised the surplus for his master. He could ouly raise his own portion by simultaneously raising more for the 'raiyat'. The classical feudalism failed as the serfs were more eager to put labour in their own lands and less and less labour on the demesne or master's land. While in Bengali crop-sharing he cannot get more without paying more, he cannot reduce his master's share without in the process reducing his own. This inherent mechanism of bargadari kept it alive, while in Europe the classical system had to be replaced by wage-labour. The Bengal system was thus fiscally feudal and thereby was much different than the manorial. In Europe the lord was also intimately associated with the manor, he had a direct interest in the agricultural processes of the village; and his personal lands, the demesne, could at first only be cuitivated with the forced labour of the peasantry. There continued a long struggle between the lord and the serfs. The serfs wanted to get the full value of labour themselves and the lord wanted to preserve the customs and traditions which gave them the right of ownership over the human beings. The Bengal system contained no such visible and apparent element of force, the bargadars enjoyed personal freedom and were not rooted to soil like the trees from

which escape was punishable. The Bengali raiyat, using bargadars for production, did not enjoy 'rights over human beings' to keep the system going. In the classical system, the serf had to travel a long path to transform himself into a tenant. The growth of the money economy and shortage of labour helped the process, along with other factors, to replace the obligations of personal service by money rents in Europe. The serf, there, gradually became a tenant. Here in Bengal, the system of crop-sharing did not contain the germs of its own decay and the bargadars could not transform themselves into tenants inspite of succesive rent laws. The legally accepted tenant always had a tendency to sublet at barga, thereby creating under-tenants, but in the eyes of landlaws he was always considered to be an "occupancy-raiyat'. Raiyatdari, however, was different from the Talukdari. While the Talukdars were not involved in actual mode of production, the raiyats definitely were, in the capacity as organisers or entrepreneurs of barga cultivation.

The nature of exploitation under Bargadari can be well compared with that under capitalism. The rate of surplus value under capitalist mode is directly determined by three factors: (i) the length of the working time, (ii) the quantity of commodities entering into the real wage, and (iii) the productiveness of labour. The first one determines the total time to be divided between necessary and surplus labour, the second and the third one determine how much of this time is to be counted as necessary labour. The Bargadars seem to raise the length of the working day incessantly as only by doing that they can expect to produce more for themselves. This built-in-mechanism apparently concealed the elongation of the working time. The second factor is miserably low, and the third factor also moves constantly against the Bargadar as a rise in the productiveness raised the surplus value. The rate of surplus value which is also known as the rate of exploitation, is defined as the ratio of surplus value to variable capital in the production process, all such expenses (like maintenance of animals etc.) were borne by the Bargadars.

The system thus is rather more exploitative than even cultivation by wage-labour.

In conclusion we may also take note of the subsequent tenancy legislation and the changes which took place in the agrarian economy in general and the subinfeudatories in particular. The rack-renting of the peasantry led to deep unrest among the cultivators and the Mutiny in 1857 contained these elements of discontent also (along with those of other classes). The rising compelled the British to reduce the land revenue, which placed a limit to feudal extraction. Sir Rivers Thompson (Lieutenant Governor of Bengal, 1882-1887) said in the Imperial Legislative Council in 1883 : 'It was only when..... the oppressions of the landlords threatened an agrarian revolution that the government stepped in by a Legislative enactment to arrest the natural increase of rent in Bengal, and the result was the land law of 1859.'[75] In the Punjab, in 1857-59, the land tax was halved, from one-third to one-sixth of the value of the harvest. Secondly, the unrest forced the State to limit the non-economic compulsion of the feudatories. Tenancy Act was passed in 1859 for the Permanent Settlement areas, it was also made applicable to the North Western Provinces. Under that Act if a raiyat could prove that he had been in possession of a particular plot for at least 12 years continuously, he was recognised as the occupancy tenant and received the right to use the land as he desired. The rent paid by such raiyat could be increased only by a court if there had been an over-all rise of the price of the basic crops or where the landowners had made improvements in the land. The land-owner's right to arrest the raiyat was taken away, and the right to sale the raiyats' properties in case of default was given to the authorities. In the eighteen sixties the Tenancy Act was adopted in Oudh and the Punjab.

The need to pay cash-rentals and the interest of the money-lenders, the increased demand for the raw materials from Britain and expansion of rail and water-transport all combined to draw the Indian peasant into the vortex of the world market. Agriculture got gradually commercialised, more cash crops

were being produced and food crops also were being brought into the market.

It is generally believed that all their layers of intermediaries could reap high rentals as and when trade and commerce expanded. That was not so.[72] Industrial revolution in England created increasing demand for food-grains and raw materials from India. The volume of export of agricultural produce began to rise.[73] Consequently the money value of agricultural goods went on rising, while land revenue due to the State remained fixed. Within the course of a century, the value of money measured in terms of commodities had been reduced by 75 per cent.[73] Consequently the middlemen or the intermediaries gained at the expense of the State and the Zamindar. Both were annuitants, and they failed to raise the rentals. The cultivators lost because rents were not regulated by law and occupancy rights of the raiyats could not be retained in practice without raising rents. The new increments in the money value of the agricultural produce were mostly appropriated by the intermediaries of the lowest rung. The state received a fixed sum, so also the Zamindar, so also the Patnidar, and the durpatnidar. Only the se-patnidars (for instance) who had not subinfeudated could extort a higher rent from the cultivators. Not all the layers of subinfeudating middlemen or tenure-holders could reap equal benefit.

In *Hills Vs. Ishur Ghose*[75], the Chief Justice also noticed the situation. He observed that the Zamindars complained only in those districts where they had sublet their interest in the land in *patni* or on other similar tenures to others. These tenure-holders were the persons who used to receive rent from the raiyats and who therefore would benefit by the enhancement. Only in those situations where no such subletting was done, the Zamindars could appropriate the rise.

Commercialisation needed depots and market centres, with railway junctions some of these market centres transcended the limits of a village and were being gradually transformed into towns.[76] Prof. Maurice Dobb observed : 'So far as the growth of the market exercised a disintegrating influences on the

structure of feudalism, and prepared the soil for the growth of forces which were to weaken and supplant it, the story of its influence can largely be identified with the rise of towns as corporate bodies.[77] In these areas of Bengal most of the lands were held by third or fourth degree sub-tenure-holders who could gradually sell off at speculative prices or could appropriate high urban rentals.

The present unrest, increasing commercialisation, rising prices, differentiation among both the raiyats as also among the subinfeudatories, growth of the market centres and the towns—all helped the partial disintegration of feudal relations. Such disintegration also induced the British to enact a number of new tenancy laws in Permanent Settlement areas. Under 1885 Tenancy Laws in Bengal, all raiyats were presumed to have been in occupancy of their land for at least 12 years and that they consequently had the occupancy right to their land. The burden of proving the contrary was placed on the landowner. Moreover, it was laid down that suits for an increase of rents on the same grounds as under the law of 1859 could be considered not more than once in 15 years, while the increase itself would not exceed one-eighth of the former rent. The right of the land-owner to sequester the property of the raiyat was annulled. Arrears in rent could be recovered by open auction, by a court decision, and only the land of the raiyat and not his other belongings could be sold. But, like the 1859 Act, 1885 Act contained no provision for the protection of peasants who rented land from hereditary raiyats i.e. the under-raiyats ; or others who tilled the "private land" of the land-owner (khamar, nijjot and sir).

The tenancy legislation enacted in the closing quarters of the 19th century in other parts of India was, in the main, based on identical principles, although in many cases it limited the hereditary rights of the raiyats as compared with the Tenancy Act in Bengal. At the turn of the 20th Century the tenancy acts were more or less in effective operation in most of the regions and estates covered by them. For instance, the raiyats enjoying occupancy rights held about 90 per cent of the

land in Bengal, over 60 per cent of the land in N.W.F. provinces and roughly 80 per cent of the land in the central provinces.

With such revenue reforms and tenancy laws there began a new stage in the development of private property in India. Private property in land develops with the release of the landowner from the 'obligations and duties towards the state, arising out of the ownership of land. But in India, in the second half of the nineteenth century, the landowners in most cases continued to have considerable revenue obligations to the state, obligations that sprang directly from the ownership of land. In the raiyatwari areas also despite the modifications in the methods of exploitation by land-taxation, the land revenue usually swallowed up most of the raiyat's surplus product. In the second half of the 19th century even the law formally regarded the land revenue as comprising half the income (net assets) of the landowner, i.e. half of the landowner's rent or, consequently, not less than half of the peasants' surplus product (when the revenue was paid by the direct producer). Actually, however, the revenue share was much higher. In 1879 W. Hunter wrote that in the Bombay Presidency the land revenue did not leave the cultivator sufficient food to last his family for a year.[78] As observed by R.C. Dutt in 1903, the land revenue in raiyatwari areas comprised upto 30 to 40 per cent of the value of the average total harvest.[79]

These tenancy laws no doubt induced some changes in the agrarian relations between the last layer and the raiyat. Tenancy laws by themselves did not bring any change in the relations between the intermediaries, say Zamindar and the patnidar, or patnidar and the dur-patnidar, or the dur-patnidar and the se-patnidar. The landlord in the lowest rung of the ladder was to collect rent from the tenants and therefore the tenancy laws both in theory and practice, only affected him. The superior layers continued as mere annuitants and were not much involved, except in the punctual and full receipt from the lower ranks. The se-patnidar's powers over the person and property of the cultivator-tenants were legally reduced. In other words, these laws eased non-economic compulsion and

reinforced the occupancy rights of the peasants. By their economic substance the tenancy laws and the land revenue assessment reforms had one and the same content. Following the enactment of the tenancy acts the peasant's hereditary rights to the land in the Zamindari areas drew very close semblance to the rights of the raiyats in the raiyatwari areas following the enforcement of the revenue reforms, although in the former case these rights were usually narrower than those of the latter. Under the Zamindari system the degree of feudal hold of the hereditary raiyats was usually not higher, and sometimes even lower, than under the raiyatwari system.[80]

These reforms and laws mirrored the collapse of feudal relations above the raiyat level and the conversion of these relations into quasi-feudal survivals. But such feudal exploitation continued unabated in case of under-raiyats, the bargadars and the bonded labourers. It appears that for their economic significance, especially in view of the fact that the land-revenue assessment reforms and that tenancy acts in 19th century India removed the elements of feudal power over the person and property of the raiyat, these measures were in some ways comparable with the abolition of serfdom in Russia in 1861.[81] However the relation between the occupancy raiyats and the underraiyats was oriented on feudal lines.

The growth of simple commodity production as a result of India's conversion into a market and a source of raw materials also undermined and broke up feudal relations above the raiyat level.[82] From the mid-19th century onwards, following the land revenue assessment reforms and the promulgation of the tenancy laws, when the raiyat's land acquired a market value, the expropriation of the holdings of the small raiyats by the bigger ones and the non-peasant money-lenders and outsiders developed gradually along the lines of primary accumulation. Property inequality among the raiyats led to increasingly marked distinction between the relatively well-to-do elite and the poor peasants, who, to one extent or another, had to sell their labour.[83]

It can also be noted that in the 1880s in Bengal the raiyats,

big or small were emerging from their former state, which was a form of serfdom.[84] The fact that in the Zamindari areas some sections of the well-to-do raiyats acquired the right to own holdings at fixed, sometimes only nominal rates or rents signify the growth of a relatively prosperous elite in the countryside.[85] To use the words of Marx, this signified the redemption by these peasants of their quitrent obligations and their virtual conversion into landowners.[86] The statistics on the sale of raiyat holdings in Bengal 1881-1882 are extremely indicative.[87] Of the 50,500 raiyat holdings sold 'voluntarily' in that year (of which over 32,600 were holdings with occupancy and over 17,800 were holdings at fixed rates) raiyats purchased 29,600 (8,400 with fixed rates) holdings or 59 percent of the total, merchants and usurers purchased 8,400 holdings (3,000 with fixed rates) or 17 percent, and the Zaminders purchased 4,300 (2,300 with fixed rates) or 9 per cent. Thus most of the holdings of the raiyats were acquired by other raiyats.

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60. Buchanan-Hamilton; *Geographical, Statistical, and Historical Description of Dinajpur*; also *Buchanan-Hamilton Papers*
61. W. W. Hunter, *A Statistical Account of Bengal*, pp. 337-338
62. Ibid, Vol. III
63. Ibid, Vol. II
64. Ibid, Vol. IX
65. Ibid, Vol. IX
66. *Economic History of Bengal*, Vol. II; also Komarov, quoted in Partov, op. cit, pp. 80-81
67. W. W. Hunter, op. cit, Vol. I pp, 155, 338; also *Bengal Registration Report*, (2881-82), cited in B. Chaudhuri, Land Market in Eastern India: 1793-1940, in *The Indian Economic and Social History Review*, April-June, 1975
68. *Darjeeling District Gazetteer*, 1907
69. *Jalpaiguri District Gazetteer*, 1908
70. *Dinajpur District Gazetteer*, 1912
71. *Darjeeling District Gazetteer*, 1907
72. *Rangpur District Gazetteer*, 1908
73. *Burdwan District Gazetteer*, 1908
74. *Bankura District Gazetteer*, 1908
75. Proceedings, Imperial Legislative Council, 13 March, 1883.
76. Bhowani Sen, *Evolution of Agrarian Relations in India*, p. 66
77. M. Dobb, *Studies in the Development of Capitalism*, p. 70 "The influence of their presence as trading centres, especially on the smaller estates of the Knights, was a profound one. Their existence provided a basis for money dealings, and hence for money payments from peasants to lords (which however were never absent during the feudal period), and, if the pressure of feudal exploitation and the decline of agriculture helped to feed the towns with immigrants, the existence of the towns as more or less free oases in unfree society,

itself acted as a magnet to the rural population, encouraging that exodus from the manors to escape the pressure of feudal exactions which played the powerful role in the declining phase of the feudal system....."

78. Quoted by R. C. Rutt, *The Economic History of India in the Victorian Age*. p. 430
79. Ibid, p. 492
80. Ibid, p. 462
81. Eric Komarov, "Content and Principal Forms of the evolution of Agrarian Relations in India in the 19th Century", in *New Indian Studies by Soviet Scholars*, p. 44-45
82. *Report of the Indian Famine Commission*, London, 1882, Vol. III.
83. W. W. Hunter, *A Statistical Account* of *Bengal*, London, 1876-1878, Vol. I, p. 154 ; Vol. II, p. 71, Vol.....p. 94
84. *Orders in Bengal During the years 1881-1882 to 1891-1892*, Calcutta, 1892, p . 7
85. W. W. Hunter, op. cit. Vol. V. p. 32 ; *Bengal District Gazetteers*, Calcutta, 1908-1912, Vol...VI., p. 286
86. K. Marx, *Capital*, Vol. III, Moscow, 1971, p. 798
87. *Report of the Government of Bengal on the Bengal Tenancy Bill*, Calcutta 1883, Vol I, p. 14

CHAPTER V

A NOTE ON FIEFS AND VASSALS

The ties of dependence existing between the Company and the Zamindar or the Zamindar and the Patnidar, or the Patnidar and the Dur-Patnidar resembled in some respects those existing between the Lords and their Vassals under European Feudalism. Beneath this structural resemblance there were important differences. The features of European Feudalism had been aptly summarised by Marc Bloch 'A subject peasantry ; widespread use of the service tenement (i.e. the fief) instead of a salary, which was out of the question ; the supremacy of a class of specialized warriors ; ties of obedience and protection which bind man to man and, within the warrior class, assume the distinctive form called vassalage ; fragmentation of authority—leading inevitably to disorder ; and, in the midst of all these survival of other forms of association, the fundamental features of European feudalism."[1]

The essential constituent and distinguishing characteristic of the species of estate called a feud or a fief, was from the first, and always continued to be an estate of absolute and independent ownership. The property, or dominium directum, as it was called, remained in the grantor of the estate. The person to whom it was granted did not become its owner, but only its tenant or holder. There was no direct proof that fiefs were originally resumable at pleasure but it is not denied that the fief was at one time revocable, at least on the death of the grantee. In receiving it, therefore, he had received not an absolute gift, but only a loan, or, at most, an estate for his own life.

Palgrave doubts if the word *Feudum* ever existed. The true word seems to be *Fevdum* (not distinguishable from *Feudum* in old writing), or *Feftum*. *Fiev*, or *Fief* (Latinised into *Fevodium*, which some contracted into *Feudum*, and others, by omitting the V, into *Feodum*), he conceives to be *Fitef*, or *Phiter*, and

that again to be a colloquial abbreviation of *Emphyteusis* (Pronounced *Emphytefsis*), a well known term of the Roman imperial law for an estate granted to be held, not absolutely, but with the ownership still in the grantor, and the usufruct only in the hands of the grantee. It is certain that emphyteusis was used in middle ages as synonymous with *precaria* (an estate held on a *precarious* or uncertain tenure); that precaria and also *prastita* or *prastaria* (literally loans) were the same with beneficia; and that beneficia under the emperors were the same, or near the same, as fiefs.

The other chief element which enters into the system of feudalism is the connection subsisting between the grantor and the grantee of the fief, the person having the property and the person having the usufruct, or, as they were respectively designated, the suzerain or lord, and the tenant or vassal. Tenant may be considered as the name given to the latter in reference to the particular nature of the right over the land, vassal that denoting the particular nature of his personal connection with his lord. By some writers the feudal vassals have been derived from the *comites*, or officers of the Roman Imperial household; by others from the *comites* or companions, mentioned by Tacitus as attending upon each of the German chief in war. The latter opinion is ingeniously maintained by Montesquieu. One fact appears to be certain and of some importance, namely, that the original *vassali* or *vassi* were merely noblemen who attached themselves to the court and to attendance upon the prince with out necessarily holding any landed estate or beneficium by royal grant. In this sense the words occur in the early part of the ninth century. Vassal has been derived from the Celtic *gwas*, and from the German *gesell*, which are probably the same word, and of both of which the original signification seems to be a helper, or subordinate associate, in labour of any kind.

If the vassal was at first merely the associate of or attendant upon his lord, nothing could be more natural than that, when the lord came to have land to give away, he should most frequently bestow it upon his vassals both as a reward for their past, and a bond by which he might secure their future services.

It was not the interest of the vassals to sever their connection and to allow him to become independent; probably that was as little the desire of the vassal himself; he was conveniently and appropriately rewarded, therefore, by a fief, that is, by a loan of land, the profits of which were left to him as entirely as if he had obtained the ownership of the land, but its precarious and revocable tenure, which, at the same time, kept him bound to his land in the same dependence as before.

Thus developed the union of the feud and vassalage—two things which remained intimately and inseparably combined so long as the feudal system existed. Nevertheless; they would appear, as we have seen to have been originally quite distinct, and merely to have been thrown into combination by circumstances. At first, it is probable that as there were vassals who were not feudatories, so there were feudatories who were not vassals. But very soon, when the advantage of the association of the two characters came to be perceived, it would be established as essential to the completeness of each. Every vassal would receive a fief, and every person to whom a fief was granted would become a vassal. Thus a vassal and the holder of a fief would come to signify, as they eventually did, one and the same thing.

Fiefs, as already, intimated, are generally supposed to have been at first entirely precarious that is to say, resumable at any time at the pleasure of the grantor. But if this state of things ever existed, it probably did not last long. Even from the first it is most probable that many fiefs were granted for a certain term of years or for life. And in those of all kinds a substitute for the original precariousness of the tenure was soon found, which while it equally secured the rights and advantages to the vassal. This was the method of attaching him by certain oaths and solemn forms, which besides their force in a religious point of view, were so contrived as to appeal also to men's moral feelings and which, therefore, it was accounted not only impious but infamous to violate. The relation binding the vassal to his lord was made to wear all the appearance of a mutual interchange of benefits, of bounty and protection on

the one hand, of gratitude and service due on the other ; and so strongly did this view of the matter take possession of men's minds, that in the feudal ages even the ties of natural relationship were looked upon as of inferior obligation to the artificial bond of vassalage.

As soon as the position of the vassal had thus been made stable and secure, various changes would gradually introduce themselves. The vassal would begin to have his fixed rights as well as his lord, the oath which he had taken measuring and determining both these rights and his duties. The relation between the two parties would cease to be one wholly of power and dominion on the one hand, and of mere obligation and dependence on the other. If the vassal performed that which he had sworn, nothing more would be required of him. Any attempt of his lord to force him to do more would be considered as an injustice. These connections would now assume the appearance of a mutual compact, imposing corresponding obligations upon both, and making protection as much a duty in the lord, as gratitude and service in the vassal.

Other important changes would follow this fundamental change, or would take place while it was advancing to completion. After the fief had come to be generally held for life, the next step would be for the eldest son usually to succeed his father. His right so to succeed would next be established by usage. At a later stage fiefs became descendible in the collateral as well as in the direct line.

At a still later, they became inheritable by females as well as by males. There is much difference of opinion, however, as to the dates at which these several changes took place.

Originally fiefs were granted only by sovereign prince, but after estates of this description, by acquiring the hereditary quality, came to be considered as property to all practical intents and purposes, these holders proceeded, on the strength of their completeness of possession, themselves to assume the character and to exercise the rights of Lords, by the practice of what was called subinfeudation, that is the alienation of portions of their fiefs to other parties, who, thereupon, were placed

in the same or a similar relation to them as that in which they stood to the prince. The vassal of the prince became the Lord over other vassals ; in this latter capacity he was called a *mesne* (that is, an intermediate) Lord, he was a lord and a vassal at the same time. In the same manner, the vassal of a *mesne* lord might became also the lord of other *arrere* vassals, as those vassals that held of *a mesne* lord were designated. This process sometimes produced curious results, for a lord might in this way actually become the vassal of his own vassal, and a vassal a lord over his own lord.

The distinction between the relationship prevailing in Europe and as developed in Bengal was very wide and distinct. While the fiefs contained promises of military service, the Patthas did not have such elements. The fiefs were based on personal loyalties, the Patthas had no such conditions. The fiefs were enshrined in oaths, morality, solemnity, gratitude and dutifulness based on almost inviolable religious sanctity, the patthas and Kabulyats were exchanged against financial consideration and were more in the nature of contracts, which could be and were clearly justiciable in a court of law. While pattas were saleable or purchasable, thus attainng some element of a commodity, the fiefs were conventionally based on personal relationship. The nature and connotation of thesetwo, therefore, were widely different and no sensible comparison is possible, though both of them were instruments of subinfeudation or devolution of landed rights from the upper hierarchy to the lower one.

The absence of the demesne-farming of European pattern in Bengal or in India was the most striking difference. Indian feudalism remained fiscal and monetary in character, it was not manorial. In Europe the lord was intimately associated with the manor ; he had a direct interest in the agricultural processes of the village ; and his own lands, the demesne could at first only be cultivated with the forced labour of the peasantry. There was a long struggle between the lord and the villagers. The villagers wanted to get the full value of labour themselves and the lord wanted to preserve the customs and traditions which gave them the right of ownership over the human beings.

From the position of a serf to the position of a tenant was a long path the cultivators had to travel. The growth of money economy and the shortage of labour (in England due to Black Death) helped along with other factors, to transform the obligation of personal service into money rents. The serf, thus gradually became a tenant.

But here in India things were different. Shelvankar writes, (*The Problem of India*) : 'on the plane of theory, the difference is rooted in different conceptions of monarchical power.' The King under European feudalism combined in himself authority over all persons and things in his kingdom, when the king's dominium was delegated under vows of allegiance to a number of barons and fief-holders of different degrees, and a hierarchy of authority was created, the power and the rights that were passed on from superior to inferior were power and rights over things (i.e. over the land of a given area) as well as over the persons connected with it.

In India there was nothing analogous to the Roman conception of dominium, and the Sovereign's power was not, until a late period, regarded as absolute and unlimited over the agricultural land of the kingdom. The king did not, in theory, create subordinate owners of land because he himself was not in theory the supreme owner of land. What he delegated to the intermediaries was not even his sovereignty understood in this restricted sense, but only the specific and individual rights of *Zamin*, the revenue collecting power, the rights over *Jama*.

When there was a conflict it was over the share of the agricultural produce to be retained by the peasant or surrendered to the lord. The foundations of agriculture themselves were not affected. Nor there was such widespread and general rise in prices or the temptation of greater income by turning arable into pasture, to lead the baronage to assert their power in a manner capable of introducing fundamental changes in the rural economy. The lord therefore was in general satisfied to exact his utmost from the peasant in the shape of produce without concerning himself with the economic and technical questions of increasing production.

PART TWO

Legal Process

CHAPTER I

PATNI AS PROPERTY

Field in his 'Regulations' dwelt on the derivation of the word Patni as follows : 'The derivation of the word *Patni* is, according to Wilson, uncertain. Mr Harington says it may be rendered 'settled or established', which Professor Wilson pronounces very questionable. There is a word '*Pattan*' which I have met in several districts used of settling with letting to, a tenant, which is doubtless connected with Haringtons explanation.'

The most important aspect of a *Patni* lease was that it was not an agricultural lease. The lease was not granted to a producer for purposes of cultivation. 'There is no authority', observed Maclean, C. J. on *Pramatha Nath Mitter and another V. Kali prosunna Chowdhury and others*[1], 'for such a proposition and so to hold, would, I think, come as a great surprise to the people of Bengal. A Patni lease is generally granted to a middleman with a view to his subletting, which he generally does. It is not the patnidar, but his tenants who take land for agricultural purposes.'

That some consideration money was paid might mean that *Patni* was akin to sale. On the otherhand, the payment of an yearly sum made it akin to lease. In actuality it was not an out and out sale, as yearly sums were to be paid ; neither it was purely a lease as this property could not be generally reverted back if terms detailed out in the contract were maintained. It was midway between sale and lease, a relation which combined some of each, more of a lease than of a sale.

What then was the nature of a *patni* ? The question was debated in the case of *Taracharan Biswas and others V. Ram Govinda Chowdhury and others.*[2] Jackson, J., who delivered the judgement of the court, observed : 'It seems to us that patnis, darpatnis and sepatnis, although they may not be in strict analogy with leases in England, lie somewhere between

out-and-out sales and leases, and that at all events they contain in themselves sufficient of the nature of a lease to incline us to give the grantee or taker, in cases where it is otherwise equitable, that protection which a lessor in England is understood to guarantee his lease for possession of the land. In the first section or Preamble of Regulation VIII of 1819, patnis and subordinate darpatnis and sepatnis are throughout spoken of as tenures and under-tenures and the instruments treating them are called leases. The fact that a consideration is commonly paid, does not seem to us to make the transaction as one of pure sale, because it arises from this generally that grantors are persons in need of money. Their needs vary with circumstances and according as their need for money is greater or smaller, the consideration is in proportion larger or smaller and the rent reserved is accordingly smaller or greater."

There was however, the relation of landlord and tenant between a Zamindar and his Patnidar. "It seems", said Jackson, J., in the same case referred to above, 'to have been thought not only by Mr Justice Kemp, but also by Sir B. Peacock, that the rules applicable in the relation of landlord and tenant in England would be applicable in this country, whenever no precise rule regulating the subject is to be drawn from the Hindu or other Common law, and certainly, where those principles appear to be equitable, we should be inclined to apply them.' In *Joykrishna Mukopadhya v Surfanessa*[3], again, Petheram, C. J., decided that the relation of landlord and tenant subsisted between the Patnidar or his assignee and the Zamindar during the whole continuance of the tenure.

Nature of Patni property was detatiled in the section 3 of the Regulation VIII of 1819. The relevant three clauses are reproduced below. 'First—The tenures known by the name of Patni taluks as described in the preamble to this Regulation, shall be deemed to be valid tenures in perpetuity, according to the terms of the engagements under which they are held. They are heritable by their conditions; and it is hereby further declared that they are capable of being transferred by sale, gift, or otherwise, at the discretion of the holder, as well as

answerable for his personal debts, and subject to the process of the courts of Judicature in the same manner as other real property.'

'Second—*Patni talukdars* are hereby declared to possess the right of letting out the lands composing their *taluks* in any manner they may deem most conducive to their interest, and any engagements so entered into by such *talukdars* with others shall be legal and binding between the parties to the same, their heirs and assignees: provided, however, that no such engagements shall operate to the prejudice of the right of the Zamindar to hold the superior tenure answerable for any arrear of his rent, in the state in which he granted it free of all incumbrance resulting from the act of his tenant.'

'Third—In case of an arrear occurring upon any tenure of the description alluded to in the first-clause of this section, it shall not be liable to be cancelled for the same, but the tenure shall be brought to sale by public auction, and the holder of the tenure will be entitled to any excess in the proceeds of such sale beyond the amount of the arrear of rent due, subject, however, to the provisions contained in section 17 of this Regulation.'

Patnidar could exercise all rights of ownership as those of the Zamindar's. Thereby these tenures became as much property as the Zamindari rights were. 'By Sec. 3 of that Regulation (Reg. VIII of 1819) *Patni* tenures are declared valid, transferable and answerable for debts..... By that section these tenures are made transferable in perpetuity and are transferable by sale, gift, or in any way which the *Patnidar* thinks fit, so that by virtue of that section these tenures are made actual property in land which the holder of them may dispose of as he chooses.' (*Petherm, C. J., in Joykrishna Mukhopadhya v. Surfanessa*).[4] A Patnidar was, therefore, entitled to exercise all the rights of ownership with respect to the land which the Zamindar himself might, but for the *Patni*, have exercised.[5]

Though a *Patnidar* could exercise same rights of ownership as Zamindar, he was not, however, a proprietor within the meaning of Ss. 38 and 78 of the Land Registration Act. It was

not, therefore, necessary for him to register his name under that Act to entitle him to sue for rent. (*Sakurulla Kazi v. Rama Sundari Dassi*)[6].

A Zamindar, who gave his estate in *patni* lease, had however, still such an interest in the property as entitled him to challenge the right of another who asserted to hold it adversely to him on a lakheraji title, for the proprietory title was in him. Whatever was to the injury of his proprietory title was a valid cause of action to him (*Obhoy Ram Jana Vs Syad Mohomed Hossein*).[7] There was nothing to prevent a Zamindar from granting away a portion of his remaining rights and to create a tenure (*patni* or otherwise) intermediate between himself and the *patnidar* (*Raj Kumari Mazumdar Vs Probhat Chandra Ganguli*)[8].

The question arose again incidentally in the case of *Bibi Jarad Kumari V. Hanifuddin Akan*[9], and the Judges observed as follows : 'Although we do not think it necessary to express any definite opinion whether a Zamindar can create a permanent tenure immediately between his estate and a *patnitaluk*, we may say, on a reading of Reg. VIII of 1819, that our inclination is to answer that question in the negative.' This however, was merely an expression of opinion and was not binding. The Board of Revenue also held in one case that a Zamindar could not create a right intermediate between himself and the *patnidar*. In that case, *A*, a Zamindar, purchased by private sale a *pargana*, of which some villages had already been let in *patni* by the former proprietors and the other villages were in khas possession. He executed a deed by which he created in favour of *B* a *patni taluk* of the villages in khas possession, and by the same instrument he gave *B* a *sarbarakari* lease of all the patni mahals previously created. The deed reserved certain rents and declared that the two interests thus created should be inseparable, and that *B* should have no power to transfer the one without the other. But it was declared that the whole united interest was transferable, and that, on any default being made by *B* in payment of the reserved rent, *B*'s interest should be liable to sale under the *patni* Regulation.

A, the Zamindar, applied for the sale of the *patni* created in favour of *B*. The Collector refused the application. The appeal to the Commissioner was also rejected. On the case coming up to the Board, an appeal, they, on the advice of the Legal Remembrancer, *held* that the interest assigned to *B* by the lease was not a tenure within meaning CL. 1, Sec. 8 of Reg. VIII of 1819, and consequently the stipulation, that it would be liable to sale under the Regulation, was no effect. *Held* further that when a *patni* already existed the Zamindar could not give a lease of the lands.[10] (Board's Miscellaneous Proceedings of 2nd September, 1882, No. 128, Collection 7 File 3124 of 1882).

Patni tenures were heritable by their conditions. The term '*patni taluk*' prima facie imported a hereditary tenure as the Zamindaris under Permanent Settlement. In *Tarini Charan Ganguly & others Vs. Watson & Co.*[11] the Court held that the term '*patni taluk*' prima facie imported a hereditary tenure. Markby. J., observed : 'we concur with the Judge that the term '*patni taluk*' prima facie imports a hereditary tenure. We know of no instance in which the term' '*patni taluk*' has ever been applied to an interst which is to last for the life of the grantee only. We doubt if a single instance could be produced in which the term has been so used. As an instance in which the words used in a very marked manner as implying *ex vi termini* heritability, we may refer to the Case of *Daya Ram Vs. Bhobindur Narain*[12] where the plaintiff claimed a '*taluk*', but the Court held that he had only a '*mowrosee ijarah*'.

There was a note appended to this case by Sir W. Macnaghten, in which he said that a 'taluk' and a 'mowrosee ijarah', though both hereditary, differed in some important points. "We also think that the inference, which arises from the use of the word 'taluk', is strengthened by the addition of the word 'patni'. *Patni taluks* throughout Bengal owe their validity entirely to Reg. VIII of 1819, and we think it quite a legitimate inference that, when these parties used the words '*patni taluk*', and referred to the Regulation, they meant to describe an estate of the same general nature and with the

same general qualities as the *patni taluks* described that Regulation, one prominent feature of which is that they are hereditary. We do not hold that anything in that Regulation prohibits or impedes a Zamindar from granting a tenure which is not hereditary, nor do we derive the heritability of the tenures now under consideration for any enactment in that Regulation. We refer only to the preamble as showing what in the common understanding of persons acquainted with such matters and in the ordinary use of the language is meant by the exprssssion '*patni taluk*,' and we have no doubt whatever that, when a man grants a *patni-taluk*', he clearly means a heritable tenure. If he intends to grant anything else, the term would be misapplied ; and nothing but an express declaration that a heritable tenure was not intended would be sufficient to show that the term was used in so exceptional a sense.". So also in *Khaja Ashanoollah Vs. Kalee Mohan Mukherjee and another*,[13] where a suit was brought to recover possession and mesne profits of 12 annas of what the plaintiff described as a '*patni-taluk*' in certain *mouzahs*, it was *held* that where the word 'taluk' occurred without any sort of qualification and restriction, it referred prima facie to a hereditary interest.

Not only *Patni* was hereitable, it was also transferable i.e. alienable. The question was raised in *Tarini Chandra Ganguli Vs. Watson & Co.*[14] When Markby, J., observed : 'There can be no doubt that a tenure in the nature of a patni taluk is by its very nature alienable. Though, of course, we do not mean to deny that it is a tenure, yet the relation between Zamindar and Talukdar has scarcely any analogy to the ordinary one of landlord and tenant. Zamindar parts with all control over his property and all interst in it except to an annual rental, which has been likened in England to what is called *quit rent*. The interest of the Zamindar only requires that the *taluk* should be kept whole and entire, so that his security for the rent may not be diminished. There is nothing in the smallest degree partaking of a personal character in the relation between him and the talukdar. In this case a *pattah* granting a *patni taluk*

contained clauses prohibiting the transfer of its lands by sale or gift, and the clauses were construed as intended to prevent alienation, not of the entire *taluk*, but only a portions of land.' "We agree with the District Judge", remarked the Judges, "that these clauses were inserted, not to prevent alienation of the entire *patni taluk* as such which could in no way affect the interests of the Zaminder, but to prevent any alienation of the portions of the land, whereby, in case of default in payment of *patni* rent, doubts might arise as to what was and what was not liable to be sold for arrears. We decide the question in the terms in which it has been raised ; but we do not thereby intimate our opinion that, even if alienation were prohibited, the tenure would in this case have been forfeited to the Zamindar. The question has not been raised." So also in *Brindaban Chandra Chowdhury Vs. Brindaban Chundra Chowdhury Sircar*,[15] the Privy Council *held* that, 'under the description '*patni taluk*' and '*darpatni taluk*', it must be prima facie intended that the tenure called a *patni* tenure was a tenure transferable by sale, and upon the creation of which it was stipulated by the terms of the engagements interchanged that, in case of an arrear occurring, the estate might be brought to sale.'

But a portion of the *patni taluk* could not be sold under the provisions of Regulation VIII of 1819 (*Mahadeb Mandal Vs. Cowell*)[16] Nor could a patni taluk be divided except by an act of the Zamindar or by an act recoginsed by him. A *patnidar* could generally transfer his tenure without the consent of his Zamindar, but he could only do so *in solido* ; and the transfer of a portion in no way affected the existence of the patni in its entirety or the rights of the Zamindar (*Jadoo Nath Shah Vs. Jadav Chundra Thakoor*).[17] So also in the case of *Watson & Co, Vs. Collector of Rajshahee*[18] it was *held* that when a share in a *patni taluk* was transferred by a registered *patnidar* without the express consent of the Zamindar and disregard of the Regulation, transfer was not binding on the Zamindar.

It did not, however, follow that such a transfer was absolutely null and void. "Though clause, 1, Secn. 3 of the

Regulation", observed the Judges iu *Madhab Ram Vs. Doyal Chand Ghose*[19] "speaks of the entire *patni*, section 6 affords indication of the validity, under certain conditions, of a transfer by *patnidar*, extending, not only to fractional or aliquot parts of a *patni taluk*, but also to any alienation than that of entire interest, that is, to any alienation of the interest in any portion of the patni taluk, such portion not being an aliquot part of share, but being a portion of the land composing *patni*."

Many other cases can be cited on this issue. In *Saurendra Mohan Tagore Vs. Sarnamoyi*,[20] it was decided that, although the transferee of a fractional share of *patni* could not enforce registration of his name on payment of the necessary fee and tender of the requisite security, yet the transfer was not altogether void, and he was liable for the rent jointly and severally with the registered tenant, if the landlord chose to recognise him as one of the joint holders of the *patni*, and he was also liable for the entire rent of the *patni* estate. Similarly, in *Aosubali Pramanik Vs. Bisseshuri*[21], it was ruled that the purchaser of a share of a *patni* acquired a valid title in the property, although the purchaser was not recognised by the Zamindar. He was not exempted from liability for rent jointly with the transferor, if the landlord chose to recognise him as one of the joint holders of the *patni*.

Section 6 of the Regulation only prevented any splitting up of the tenure and apportionment of the rent without the sanction of the landlord. *It must get the concurrence and sanction of the Zamindar.* "We think", observed the Judges in this case, "that, having regard to the case of *Saurendra Mohan Tagore Vs. Sarnamoyee*,[22] and Secs. 5 and 6 of Regulation VIII of 1819, it would be impossible to hold that a transfer of a portion of a *patni* without the consent of the Zamindar is altogether void, although no doubt the Zamindar is entitled to say that the division is not binding upon him and the purchaser cannot compel any apportionment of the rent reserved."

What then, were the rights and obligations of a transferee

who purchased a part of the *patni rights* from a Patnidar and not the whole of a *patni taluk*? *Such a transferee is liable jointly and severally for the rent.* He would enjoy all such rights as the original holder (who sells) vis-a-vis the Zamindar. He could, like other Patnidars, sell or sublet his rights if he chooses. He had obligations too. Like partnership concerns, a transferee of a portion of a *patni taluk* was liable for the rent jointly and severally with the registered tenant (*Saureendro Mohan Tagore Vs. Sarnamoyi*,[23] *Aosubali Pramanik Vs. Bisseshuri*).[24] So also in *Jogemaya Dassi Vs. Girindra Nath Mukherjee*,[25] it was *held* that he was jointly liable with his co-sharer for the whole rent, for although the privity between the parties might be one of estate only, it was in respect of the whole of the tenure (though the transfer of a part) by reason of the indivisibility of the tenure without the consent of the landlord.

The principle enunciated in this case was extended a little further in *Kishori Raman Kapuria Vs. Ananta Ram Laha.*[26] where it was held that his liability ceases when whole tenure is transferred. Where a *darpatnidar*, to the knowledge of his own landlord, transferred a portion of the *darpatni* to one person on one date, and the reminder to another person on a subsequent date, the liability of the *darpatnidar* for rent, after the second transfer, ceased, and the two transferees became jointly and severally liable to the landlord for the some. "Reading Sections 17 and 88 of the Bengal Tenancy Act together," observed Geidt, J., in delivering the judgement, "I am of opinion that the true conclusion is, not to forbid the transfer of a share in a tenure, but to render the transferee jointly liable with the transfer or for the rent and this view of the law has been adopted in the case of *Jogemaya Dassi Vs. Girindra Nath Mukherjee.*[27] When, therefore, the first transfer was made, the *darpatnidar* and the transferee were jointly liable for the rent, when the second transfer was made, by which the original *darpatnidar* ceased to have any rights in the tenure, it appears to me that the effect was to make the two sets of transferees liable for the rent. In this

view of the law, the provisions of Sec. 88 have not been in any way infringed, and, at the same time, the provisions of sec. 27 have been given effect to. The landlord is still entitled to regard the *darpatni* as one undivided tenure, and to hold the entire body of transferees jointly and severally liable for the rent."

This decision was, however, doubted by Maclean, C.J., in the same case. "The act of the transferor", he said, 'in transferring the tenure piecemeal had the effect, as I think, of dividing the tenure, and if that is so, that division would not be binding on the landlord, it is difficult to see how the original transferor is freed from his original liability. He did not, however, feel his doubt sufficient to justify him in differing from the conclusion arrived at by Geidt. J. So also in *Kali Sundari Debya Vs. Dharani Kanta Lahiri*,[28] it was decided that when the holder of a permanent tenure transferred a portion of it, and the transferee hold the portion separately and was allowed to pay proportionate rent for the same to the landlord for a great many years, his liability for rent for the same to the landlord ceased upon sale by the transferee of that portion of the tenure.

How far the tenants were liable for rent on change of landlord or after transfer of the tenure? A landlord could create a tenure intermediate between himself and his tenants, but the latter were not bound to pay rent to the tenure-holder, till they received a notice of the assignment (*Mansur Ahmed Vs. Azizuddin*).[29] A parcel of land, being a portion of the land composing a *patni*, could be sold in the execution of a decree against the *patnidar*, and the tenant would be liable to pay rent to the purchaser after receipt of notice of the purchase (*Madhab Ram Vs. Doyal Chandra Ghose*)[30] If a raiyat without notice of the assignment of his landlord's interest paid his rent to the former landlord, the transferee could not recover from him the rent so paid (*Nilmoni Rai Vs. Hills*).[31] If tenants, after having had notice of the purchase of a Zamindari, chose to continue to pay their rents to, or for the use of, the former proprietor they did so at their own

peril, and could not plead for such payments in answer to a suit for rent by the new owner (*Collector of Rajashahie Vs. Hara Sundari Debi*).[32] The same rule applied when tenants continued to pay rent to co-sharer landlords after notice of the acquisition by a third party of an interest in land (*Azim Vs. Ram Lall Saha*).[33]

Apportionment of rent after the sale of a part of *patni* could be done mutually, failing which the Civil Courts could apportion rents on the basis of a suit brought for the purpose. In *Srinath Chandar Chowdhuri Vs. Mohesh Chandra Bandopadhyaya*,[34] seven mouzas had been let in *patni* to certain tenants by the Zamindar; three of these brought by *A* at a sale in execution of a money-decree against a Zamindar, and the other four by *B*. Subsequently, *A* brought a suit against the patnidar to have his share of the *patni* rent apportioned, making *B*, the purchaser of the other Mouzahs, a party to the suit. The judges held that the suit was properly framed.

But in *Kalee Chunder Vs. Ram Gatty*,[35] which was a suit for rent brought by an assignee of a portion of the interest of a certain landlord, it was *held* that, where a landlord let out land at a certain rent, the rent being payable in one sum for the whole, and the land not being let to the tenant in separate parcels in respect of each of which there was a separate assessment of the rent, he could not, without consent of the tenant, alter the position of the latter, and tell that, in future, so much of the rent should be payable in respect of one parcel only of the land and so much in respect of another parcel. Such decisions were also made in several other cases, for example, *Beni Madhab Ghosh Vs. Thakur Das Mandal*[36]; *Annada Charan Rai Vs. Kali Kumar Rai*[37] and *Ishar Chandra Datta Vs. Ramkrishna Dass*.[38] A purchaser at a sale, in execution of a decree of one of several estates let in one *patni*, was not bound by any agreement between the patnidar and other Zamindars regarding their shares of the entire *patni* rent. Nor could he claim from the *patnidar*, as his own share of the *patni* rent, a sum bearing the same proportion to the whole

patni rent as a Sudder *Jama* bears to the Sudder *Jama* of all the estates let in *patni*. In order to obtain redress in such a case, either the *patnidar* or one or all the Zamindars might have their fixed *patni* rent properly apportioned among the several Zamindars by a Civil Suit, in which all Zamindars should be parties (*Paresh Nath Ray Vs. Biswa Nath Datta*).[39]

A partition amongst the landlords was binding on the *patnidar*. On a partition, a *taluk* was split up and each co-sharer was entitled to consider the land allotted to him as his distinct *taluk*. The rent was thus split up and a single *taluk* converted into a number of separate *taluks*. The effect of a partition under the Estate Partition Act was the same as that under the Bengal Tenancy Act.

Although, however, a partition amongst the landlords was binding on the patnidar, a partition amongst *patnidars* did not bind the landlord. No doubt a patnidar had a right to demand and enforce partition or, in other words, a right to be placed in a position to enjoy his own rights separately and without interruption or interference by others, but such a partition, if made without the consent of the landlord, would not do away with his liability to be held responsible for the whole of the *patni* rent without reference to the division made among the co-sharers. Accordingly, it was held in *Rani Shama Sundari Devi Vs. Jardine, Skinner and Others*[40] that a suit for partition by a joint owner of a *patni taluk* would lie, but such partition would not affect the liabilities of the *patnidars* under their several contracts with the Zamindars.

Similarly, in *Gouree Sankar Roy Vs. Anund Mohan Moitra and others*[41] it was *held* that there was no satutory bar against a raiyat's right to partition as between himself and his co-parcener, where he did not ask for an "apportionment of the *jama*, or reserved rent," prohibited by Section 6, Regulation VIII of 1819, or, in other words, where he did not ask for such a distribution of the *patni* rent as would bind the Zamindar, or limit his right over the whole tenure as a joint one. Again, in *Jadoo Nath Saha Vs. Jadav Chandra Thakoor*,[42] it was said that a *patni taluk* cannot be divided except by an

act of the Zamindar or by an act recognised by him; the transfer of a portion in no way affected the existence of the *patni* in its entirety or the rights of the Zamindar.

But a landlord may recognise partition and there were several ways in which a landlord might recognise the division of a tenure. He might do so either formally by actually dividing the tenure into parts, or impliedly by receiving rent from parties holding separately (*Uma Charan Banerji Vs. Raj Lakhi.*)[43] In *Bharat Chandra Vs. Ganga Narain*[44] it was ruled that a Zamindar, by accepting rent, assented to a transfer which involved a subdivision of a tenure. Again in *Kali Sundari Debya Chowdhurani Vs. Dharani Kanta Lahiri*,[45] where the holder of a permanent tenure transferred a portion of it, and the transferee held that portion separately and was allowed to pay proportionate rent for the same to the landlord for a great many years, it was *held* that, upon sale by the transferee of that portion of the tenure, his liability for rent to the landlord ceased and his act did not have the effect of subdividing the tenure. This was also decided in *Baistab Charan Chaudhuri Vs. Akhil Chandra Chowdhury.*[46]

And in *Naba Kishen Vs. Sreeram*[47] it was decided that a written consent to a partition was not necessary, when a Zamindar himself put up a tenure for sale in separate lots, and took rent from two of the purchasers separately. "No doubt", observed Glover, J., in this case, there is no consent in writing on the part of the Zamindar, but the inference that he did consent to the partition is of the strongest kind. It was by his own deliberate act that the tenure was put up for sale in separate lots, and it is not denied that he has since the sale taken rent from two of the purchasers of these lots separately. The object of the Regulation was the protection of the Zamindar from the division of any part of his property without his knowledge, but in this case it was clear that he knew of the division all along, and was in fact himself the cause of the property having been so divided."

The mere fact, however, of the Zamindar accepting rent from the different share-holders of the tenancy in proportion

to their respective share, is no evidence of the landlord having consented to the division (*Gour Mohan Vs. Ananda*)[48]. And if the alleged different tenures were indissolubly connected at the time of the original holder, and if the Zamindar, in receiving rent from the present holders, had dealt with them only as representatives of the original holder and as payers of component parts of the aggregate rental, he cannot be said to have accepted the division (*Rani Lalan Moni Vs. Sona Moni*).[49]

In *Abhai Charan Vs. Sashi Bhusan Basu*,[50] it was *held* that *dakhilas*, or rent-receipts, showing that a tenant held half the land at half the rent of the whole holding did not amount to the written consent required by Sec. 88 of Bengal Tenancy Act. But the ruling in this case was distinguished in the Full Bench case of *Piary Mohan Mukherjee Vs. Gopal Pik*[51] in which it was laid down that a receipt for rent granted by the landlord or his agent in the form prescribed by the Bengal Tenancy Act, containing a recital that a tenant's name was registered, in the landlord's *serishta*, as a tenant of a portion of the original holding at a rent which was a portion of the original rent, amounted to a consent in writing by the landlord to a division of the holding and to a distribution of the rent payable in respect thereof within the meaning of Sec. 88 of this Act; provided that, if the receipt had been granted by an agent, the agent must have had duly authorised by the landlord to grant such a receipt. But where a holding was in occupation of several tenants at one entire rental, the fact that the landlord's agent (*tehsildar*) had accepted from the tenants proportionate parts of the rent did not bind the landlord, in the absence of evidence to connect the landlord with the receipt of any proportionate rate of rent by the agent (*Beni Prosad Koeri Vs. Goberdhan Koeri*)[52] Receipts, granted by the landlord's agent to the tenants separately for their proportionate shares of the rent, did not necessarily imply the landlord's recognition of the sub-division of a tenancy (*Beniprosad Koeri Vs. Ramdhani Panday*).[53] A receipt for rent granted by a landlord or his agent containing no specification of the original *jama*, no statement of the area,

or of the portion of holding separated and separately settled with the tenant, nor of the share separated, nor containing a recital that the tenant was registered in the landlord's *sherista* as a tenant of a portion of the original holding at a rent, which was a portion of the original rent, did not amount to a consent in writing to a subdivision of the holding. An entry in an account, which appears on the fact of it to have been written by a servant of a tenant, and exhibited payment of rent made in respect of six different *taluka* by the tenant to the landlord, and which was signed and received by a *Sumarnavis* of the said landlord, did not amount to consent in writing on behalf of the landlord to a division of the tenure of distribution of rent (*Jnanendra Mohan Chowdhuri Vs. Gopal Dass Chowdhury*).[54] So also in *Sri Maharani Beni Pershad Koeri Vs. Ramdahin Pandey*,[55] it was *held* that receipts for rent granted separately by the landlord's *tehsildar* to the tenants of a holding whose names were also entered in the landlord's *sherista* in the place of that of the tenant who held the tenancy before them, did not amount to a consent in writing, on the part of the landlord, to a subdivision of the tenancy within the meaning of Sec. 88 of the Bengal Tenancy Act.

The question as to whether a *patnidar* had a right of partition as against his superior landlord, and as against the co-sharers of the estate in which his *patni* was situated had been discussed in several cases. In *Mukunda Lall Pal Vs. Lehuraux*,[56] it was observed that joint possession alone was not a sufficient ground for compelling a partition and that, in order that persons might be co-parceners and so have a right to partition, not only must they be in joint possession, but that joint possession must be founded on the same title. It was accordingly *held* that a subordinate tenure-holder had no right of partition as against his superior landlord. This view was, however, dissented from in the Full Bench Case of *Hemadri Nath Khan Vs. Ramani Kanta Roy*.[57] "I am unable", said Banerjee, J., in delivering the judgement of the Court, "To assent to the view, that as a general proposition of law,

there can be no partition between parties, the interest of one of whom is subordinate to that of the other. I think the Court must in each case determine, whether, having regard to the nature of the interests owned by the parties and to all other circumstances necessary to be taken into consideration, the balance of convenience is in favour of allowing partition, and, if it determines the question in affirmative, the mere fact of the parties owing interests, which are not co-ordinate in degree, ought not to be a bar to partition." The language used in the case of *Mukunda Lall Pal Chowdhury Vs. Lehuraux*",[58] observed Beverley, J. in the same case, "may not be strictly accurate or very precise, but what was intended to be decided in that case was that mere unity of possession, or as I should prefer to term it, mere joint possession, is not enough to entile the persons so in possession to have the land partitioned by *metes and bounds*. The right to a partition can only in my opinion, exist as between co-parceners holding similar interests in the property. How 'similar interest' should be defined it may not be easy to say. They should probably be permanent transferable interests". This view of law was accepted in the case of *Bhagwat Sahai Vs. Bepin Behari Mitter*[59] by their lordship of Privy Council, who *held* that the right of partition existed when the two parties were in joint possession of land under permanent titles, although those titles might not be identical.

It follows from these observations that a *patnidar* may in such cases demand a partition, provided that the "balance of convenience" is in favour of the arrangement. And this has been held to be the law in several cases. In *Chundra Nath Nandi Vs. Hurnarain Deb*[60] the plaintiff was the proprietor of a fractional share of a portion of a revenue paying estate and had an interest only in one village. He brought a suit for partition, in which he did not seek to have his joint liability for the whole of the Government revenue annulled. *Held* that there was no bar to his obtaining a partition of his share, "The Court", observed the Judges "might hesitate to allow him a decree for the severance of a portion only of his share,

or of his proportionate shares of particular plots; but if he claims to have his whole share divided and disclaims any share in lands not included in the suit, I see no reason why he should not obtain what he claims".

In *Mukunda Lal Pal Chowdhury Vs. Lehuraux*,[61] Norris, J. was of opinion that a partition of a portion could be maintained, if as regards that portion, the joint owners were different from other joint owners. The plaintiff in this case were the proprietors of a 12-anna share in a certain tenure known as *taluk Banga Chandra Dass*, and they alleged that they were in possession of the other 4-annas as dartalukdars; but it did not appear on the proceedings to whom the plaintiffs paid rent on account of the 4-anna share. The *Taluk* in question consisted of a $7\frac{1}{2}$ annas, or a $\frac{1}{32}$ of the rents, of so much of the land of three villages, D, B and T, as appertained to the estates No. 23 of the Touzi of the Collectorate Noakhali. It appeared that estates Nos. 23, 24, 25 and 26 represented fractional shares in three parganas comprising some 500 villages. No *batwara* had been made of these parganas. But by some private arrangement, apparently, certain lands in a village had been assigned to one estate and certain other lands to another, some lands having been kept common to all the four estates. Thus the estates did not consist of entire villages, but of specific lands in certain villages and a joint interest in other lands kept *ijmali*. There was yet another complication in this intricate and curious system of tenures. It appeared there was another permanent tenure called *taluk* Sobharan in this estate No. 23, which *taluk* consisted of land not only in the three villages in suit but in nine others. A 2-anna share of this *taluk* was in the khas possession of the defendant: of the other 14 anna share, a $7\frac{1}{2}$ anna share was held under the plaintiff. A suit was brought by the plaintiffs for partition of such of the lands of taluk Banga Chandra Dass as appertained to estate No. 23 and were separate from the other estate, to which the other Zamindars of estate No. 23 were made parties. It was *held* that, assuming that the plaintiff were entitled to partition at all, the suit would lie as regards the land specified as belon-

ging to estates No. 23 without reference to the lands held in common as belonging to all the four estates.

In the case of *Barahi Debi Vs. Deb Kamini Debi*, Petheram, C. J., and Norris J , expressed a similar opinion. They said, 'No authority has been cited before us in support of the proposition that, where a fractional share in a property which forms part of a joint estate has been sold, the purchaser cannot obtain separate possession of the share he has bought, without partitioning the whole joint estate, and I think that to give effect to it, would practically amount to a refusal to allow the purchaser of such a share to obtain separate possession of it at all and this would, in my opinion not only be inequitable, but would greatly diminish the value of the property held in this way. I think this contention must fail.' And in *Hemidri Nath Khan Vs. Ramani Kanta Roy*[63], where the plaintiff, who was the proprietor of an entire estate paying an annual revenue to Government, sued to have his ten-anna share of the estate partitioned by *metes and bounds* from the other undivided six annas (which his father had given in *patni* lease to the defendant's predecessors in title), on the ground that although the estate was held in *ijmali* and he and the defendant collected separately from their tenants their respective shares of the rent, difficulty and inconvenience had arisen in the management of the property, and where there was no prayer that the land of the entire estate should be relieved of the liability as before to pay the entire amount of the Government revenue payable in respect of it, it was *held* by the Full Bench that the plaintiff was entitled to a decree for partition.[64]

So also in the case of *Bhagwat Sahai Vs. Bepin Behari Mitter*[65], where the appellants, plaintiffs in a suit for partition, were proprietors of a mukarari interest in the property a partition of which was sought, and the respondants, defendents in the suit, were owners of a fractional share in the Zamindari interest in the same property, and where the *mukarari* lease was in certain contingencies, liable to forfeiture, and the High Court had *held* that the appellants' tenure was on that account not sufficiently permanent to support their claim to partition,

to which they would otherwise have been entitled, it was *held* by the Judicial Committee of the Privy Council (reversing the decision) that the distinction drawn by the High Court could not be supported and that the appellants' title being a permanent one, though liable to forfeiture in events which had not occured, the rights incidental to that title must be those that attached to it as it existed, without reference to what might be lost in the future under changed circumstances.

A contrary view was taken in the case of *Parbati Charan Deb Vs. Aniuddin*[66], where the owner of a twelve-anna share in a joint Zamindari consisting of 100 *drones* land granted to the plaintiff a mukerari lease of his share in a small portion of land (2 *drones*), while the owners of the remaining four-anna share granted a *patni* of the whole of their share to the defendants, and the plaintiff brought a suit against the defendants for a partition of the small plot of land, and it was *held* that such a suit would not lie because the Zamindars had not been made parties and also becaused a partition could not be enforced of a part of the estate held by the defendants, who were entitled, by right of their *patni*, to an undivided four-annas share in the whole estate. This ruling was, however, referred to in the case of *Radha Kanta Saha Vs. Bipro Das Roy*[67] and the Judges observed, 'So far as we understand the judgement, the question (in that case) was one of convenience and inconvenience and it was not laid down, as a matter of law, that a partition of a portion of revenue-paying estate when that portion is capable of partition without much inconvenience to other shares is absolutely barred by law.' In *Radha Kanta Laha Vs. Bipra Das Roy*[68] where the estate consisted of three different villages, in one of which the plaintiff had a *Kæmi mourasi miras* right to certain shares and no interest in the other two, and where the plaintiffs asked for a partition of the village in which he was interested, making the entire body of proprietors parties to the suit, the Judges discussed all the authorities cited above and *held* that the rules deducible from them were :

(1) First, that the plaintiff, notwithstanding that he was a

subordinate tenure-holder of a fraction of an estate, was entitled to partition as against the proprietors of other shares ; and

(2) Secondly, that, notwithstanding that he held a share of one village out of many in the estate, he was entitled to to have his share separately curved out.

They observed, however, that in all such cases the question of convenience and inconvenience must be taken into cosideration. The same view was taken in the case of *Uma Sundari Debi Vs. Benode Lall Pakrashi*[69] where it was ruled that, in the absence of any inconvenience to other co-sharers, a *patnidar* whose right extended over only a fractional share of one of many *mouzahs* in the Zamindari, was entitled to maintain a suit for partition. "It is settled law now", the Judges said, 'that a *patnidar* of fractional share can partition any property held jointly by himself and some of the defendants, although the defendants may be jointly interested with or without other persons in the remaining portion of the estate. It was held in the case of *Radha Kanta Saha Vs. Bipra Das Roy*[70]. It was also held in the case of *Barahi Debi Vs. Debkamini Debi*[71] that there was no objection to a decree being made for the separation of a share, purchased by a stranger, from the other joint owners without partitioning the whole joint estate. The plaintiff is, therefore, entitled to to ask for partition of her *patni* share. It is idle for the defendant-respondents to urge that in this suit we should order the partition of at least four with three of which the plaintiff has nothing whatever to do'. In *Upendro Chandra Shingha Roy Vs. Mohomed Faiz*[72] again, it was *held* that a person holding a permanent interest, though an interest of an inferior grade, might bring a suit for partition as against persons who held interest of a superior grade. Consequently a *patnidar* might bring a suit for partition against his co-patnidars or against darpatnidars under his co-patnidars ; in the latter case the co-patnidars must be parties.[73] The *darpatnidars* were not, however, necessary parties in such a suit. Where it was found that the addition of dar-talukdars as parties would make the suit highly complicated, it was *held* that such dar-talukdars

should be allowed to watch the partition proceedings, but need not be made parties.[74]

What happened when patnidar purchased the darpatnidar rights granted by himself ? How far did the rights of property, say of patnidar and darpatnidar, were merged ?

Before the passing of the Transfer of Property Act, the the doctrine of "Merger"—the extinction of the inferior right of a *patnidar* in the higher right of a Zamindar—did not apply in this country. "My own impression is", observed Peacock, C. J., in the Case of *Woomesh Chunder Vs. Rajnarain*[75]. 'That the doctrine of merger does not apply to lands in the moffusil in this country...I believe it is the practice in this country for Zamindars to purchase and keep on foot *patni-taluks*, without the necessity of adopting the practice, which is followed in England, of purchasing such taluks in the name of a trustee to prevent the merger of them'. A similar view was taken in the case of *Jibanti Nath Khan Vs. Gokul Chandra Chowdhury*[76] where it was held that there was no merger in the case of a *patni* interest coming into the same hands as the Zamindari interest. In the case of *Promotho Nath Mitter and another Vs. Kali Prosunno Chowdhury*[77], however, it was decided that a *patni* interest created after the passing of the Transfer of Property Act (Act IV of1882), is determined on a purchase of the same by the Zamindar, even at a sale held in execution of a decree.

In distinguishing this case from *Jibanti Nath Khan Vs. Gokul Chandra Chowdhury*, referred to above, Banerjee J. observed, 'That case (i.e. Jibanti Nath Khan Vs. Gokul Chundra Chowdhury) was decided without any reference to the Transfer of Property Act were inappplicable by reason of Cl (2) of Sec. 2 of that Act, the *patni* lease in that case having been granted and the *patni* having been created before the Transfer of Property Act came into operation'. A Zamindar purchasing a *patni* under him can, therefore, deal with his two rights as one now. Similarly, when the *patnidar* of a *mahal*, which formed a portion of Zamindari, purchased the Zamindari rights in the mahal and from the date of his purchase paid

no rent as *patnidar*, it was *held* that he could not set up his title as patnidar against his Zamindari co-sharers in a suit brought by them for contribution (*Prosunno Vs. Jogut*)[78]. The same view was taken by the Board of Revenue in a case where a *patni taluk* belonging to a trust-estate was sold for arrears of rent, and was purchased on behalf of the estate subsequent to the sale, the *patnidar* paid the arrears due from him as well as the costs of bringing the *patni* to sale, and asked that the *patni* might be restored to him. The Collector and the Commissioner recommended that the sale might be considered null and void and the *patnidar* remain in possession as before. The Legal Remembrancer, who was consulted, expressed his opinion that the *patni taluk* had merged in the proprietory right by the purchase on behalf of the estate, and that the old *patnidar* could not be re-instated without a fresh *patni* lease[79].

Patnidar's right of underletting was detailed in Sec. 4, of the Regulation VIII of 1819, which runs as follows :

'If the holder of a *patni taluk* shall have underlet in such manner as to have conveyed a similar interest that enjoyed by himself, as explained in the preamble to this Regulation, the holder of such a tenure shall be deemed to have acquired all the right and immunities declared in the preceeding section to attach to *patni taluk*, in so far as concerns the grantor of such undertenure The same construction shall also hold in the case of *patni taluks* of the third or fourth degree."

It is not competent to a superior landlord like *patnidar* to grant a lease of land of which he is not in possession, and by such a grant, to give opportunity to a party to raise the question of his title, and have it indirectly settled. In order to enable a lessee to defend any section, his grantor must be in possession at the time of the grant, otherwise a suit for possession at the tenant's instance alone cannot be supported (*Dinomonee Banerjee Vs. Gyrutullan Khan*)[80].

In *Pran Kristo Deb Vs. Bissumbar Sen*[81], however, the decision was held otherwise. So also in *Tara Sundari Debya and others Vs. Shama Sundari Debya* and others[82], a *patni* estate was the inheritance of 5 brothers, two of whom appropriated

the whole of it, and the plaintiff, as the holder of a *Kaimi patta* from the *darpatnidar* of the 3 ousted brothers sued to obtain possession of the share of the estate to which he considered that he has entitled. The Lower Court decided that such a suit would not lie, as the suit must be preferred by the ousted brothers themselves. The High Court, however, held that the Lower Court was altogether wrong, and that the plaintiff's claim must be tried and adjudicated upon. "In fact", observed that Court, 'the plaintiff, under the circumstances, is the sole person who could bring a suit to recover the portion of the estate covered by the plaintiff's *pottah*, as he represents the original owners, the three brothers.'

In *Loke Nath Ghosh Vs. Jagbandhu Roy*[83] plaintiff sued for a declaration of his *darpatni* and *charpatni* rights in certain estates and for possession. He alleged that he obtained in 1278 (1870) a *darpatni* of an 8-anna share in the properties from Girish Naraian Ray and Mohendra Narain Ray, the heirs of Boykunt Nath Roy, the patnidar of the said share ; that he afterwards granted a *sepatni* of one of the estates to one Kistho Bulluv Roy and again took from the latter a *charpatni* ; and that, on attempting to take possession of the estates, he was opposed by the defendants. It appeared that the plaintiff had paid the consideration for the *darpatni*, but it was admitted on his behalf that Girish Narain Ray and Mohendra Narain Ray were not in possession when they granted the *darpatni*. *Held*, (1) that a transfer of property of which the transferor is not in possession at the time of the transfer is not *ipso facto* void ; (2) that, where a *patnidar*, while out of possesion of the *patni* estatee, granted a darpatni thereof, the darpatnidar suit against persons, who were in possession of the estate, to recover possession would lie, it appearing that the plaintiff had paid adequate consideration for the *darpatni*, and (3) that the *darpatni pottah* was not evidence of a contract to be performed in future on the happening of a certain contingency, but, that if it was so, the plaintiff had done all that he was bound to do to entitle him to specific performance of the agreement by the *patnidar*.

Right to minerals was always a vexed question and Zamindars and Patnidars constantly fought over it. Temporary lessees had no right to the minerals underlying their land, and could only work mines, quarries, or pits, which were open when they came into possession (*Prince Mohomed Bakhtyar Shah Vs. Rani Dhojmoni*)[85]. In regard to *Purmandas Jeewandas*, this view was confirmed by their Lordship of the Council in *Tituram Mukherjee Vs. Cohen.*[86]

But Permanent lessees have full right down to the centre of the earth. As regards permanent lessees, it was established that a contract to sell or grant a lease of land will generally include the entire solum from the surface down to the centre of the earth, and will, therefore, include the mines, quarries and minerlals beneath or within it. In this connection the observations of Sir John Romilly, M.R., in *Kerr Vs, Pawson*[87] and those of Sir Richard Kindersly, V.C., in *Williamson Vs. Wooton*[88] can be noted. Similarly, a conveyance of land, is *prima facie* a conveyance of the entire solum from the surface down to the centre. This can also be seen in the observations in *Harris Vs. Ryling*[89], *Spooner Vs. Green*[90] and *Ear l of Jersey Vs. Gardians of poor.*[91] In the last case mentioned, Lord Esher observed, that, if the conveyance was of all the lands and if there was no reservation, that would carry all the minerals within the ambit. Indeed, so strong was presumption that a conveyance of land carried with it the minerals, that it had been held that a purchaser need not disclose the existence of a mine, unknown to the vendor, which increased the value of the property itself. It was also seen in *Fox Vs. Mackreth*[92]. "The principle", observed Mukherjee, J., in *Megh Lall Pandey Vs. Raj Kumar Thakur*[93] 'upon which this presumption is raised appears to be that minerals in place or undistributed in the position in which they have been deposited by the agencies of nature, are a part of the land, and belong to the owner of the soil ; although, therefore, minerals in the grounds are capable of severance, or separation of ownership from the soil, and, when so served, are independently and separately inheritable and capable of

transfer, yet when there has not been such separation and a reservation, they will pass, if all the rights of the owner are transferred.'

Let us discuss the principle involved in such cases. In, *Adam V. Briggs Iron Company*[94], it was held that *prima facie* the owner of free hold lands is entitled to all the minerals and strata of coal, clay or ore, lime, marble and the like, not as a separate estate, but as a part of the fee and inheritable, and they will pass by descent or conveyance without special designation. The general rule, may, therefore, be taken to be that when mines or minerals unsevered inheritance, an owner in fee-simple possesses in all free hold lands, an unrestricted right to work the mines in his estate, and his conveyance, in the absence of an indication to the contrary, grants all mines and minerals therein. In other words, a conveyance of land, in the absence of an express limitation, passes the entire estate, if the grantor is seized of the entire estate and carries with it all the grantor's right and title to an interest in the mineral, unless they are expressly reserved by the terms of the instrument or have been previously granted.' The same view has been taken by Mr. Justice Saroda Chandra Mitra.[95]

Privy Council, however, decided against English idea in case of India. In *Harinarain Singh Deo Vs. Sriram Chakravarti*, their Lordship of the Privy Council doubted the correctness of of the view, which, in their opinion seemed practically to ignore the distinction between the mere tenure-holder and the Zamindar. The question for decision in this case, was, whether certain Goswami, the *shebaits* of idol and lessees of a village in the Zamindari of the appellant the Rajah of Pachete, had under their lease, which had been granted by a predecessor in the title of the appelant about 60 years ago, acquired any right in the minerals beneath the surface of village, which they could have transmitted to the respondents who claimed to hold under them. There was no document in evidence defining the terms of the lease to the Goswami. Two decrees in favour of the Rajah for the payment of an annual rent of Rs. 22-15-6 by the Goswamis were put in, one of which they were described as

cultivator and in the other as "*britti-holders*". There was no evidence whatsoever that the Rajah had ever granted mineral rights in the village to the Goswamis or to any other person. Both the courts in India found that the village was *mal* (rent-paying) of the Zamindari of the Rajah, and that no presciptive right had been proved by the respondents to any undergrouud rights in the village. The High Courts decided that the Zamindar had created a permanent tenure of an agricultural character and that the tenure-holder would possess all underground rights in the absence of an express reservation by the Zamindar. The judicial committee of the Privy Council, however, reversed this decision and *held* that the title of the Zamindar Rajah to the village being established, he must be presumed to be the owner of the underground right apportaining thereto in the absence of any evidence that he had parted with them. It is doubtful if this decision of the judicial committee, was in consonance with English legal ideas, but it was certainly opposed to the popular view in this country which the judgement of the High Court reflected. If it be not taken to be strictly limited to the facts of the particular case, it would have very serious consequences in the then existing mining leases, most of which were derived from tenure holders. This decision was, however, followed by the High Court in the latter case (*Jyoti Prosad Singh Vs. Lachipur Coal Company*)[97] where it was held that there was no difference in principle between lease for years and a lease in perpetuity, when nothing was known or nothing could be inferred about the intention of the parties at time of the inception of the lease, and that the lanlord continued to have a reservation in mines discovered after the grant of such a lease.

To ascertain the rights of the grantee, the language of the instrument and the intent of the parties as well as the estate held by the grantor must be taken into consideration. Where, therefore, a *mukarari* lease of a whole *mouza* "*mai Lak hakuk*" was granted, it was held that the grant created a permanent lease without any reservation, and that, it conveyed to the lease all the lessor's right in the land, including the right to work

minerals (*Megh Lall Pandey Vs. Raj Kumar Thakur*).[98] Where, however, in a *patni* lease, the coal and mineral rights and the surface of such of the lands as are coal-bearing are excepted from the grant, the *patnidar* is bound by the reservation (*Rameshwar Malia Vs. Ram Nath Bhattacherjee*)[99]. In such a case the lessor impliedly reserved to himself as a necessary incident the right to dig for and win them. The reservation of mineral rights apart from the surface rights must had been taken to carry as an incident to it the power not only to go upon the land and work the minerals known to be underground, but to go on the land to conduct the ordinary preliminary operations by boring or otherwise to ascertain, when it was not known, if there were minerals underground[100]. So also in *Gandoo Mahata Vs. Nilmonee Singh Deo*[101] it was held that when a grantor of *patni* lease had reserved to himself the right to underground coal and lime stone, he was entitled to ingress and egress upon the *patni mahal* for the purpose of reasonably working the mineral rights which were reserved to him by the *Kabuliyat*, but was bound to do no more damage to the surface than was absolutely necessary, and protect the lessee's right to support in case any excavations were made, and compensate him for any injury to the surface of the soil. It may be observed that a reservation of minerals in a *patni* lease did not necessarily include every substance which could be got from underneath the surface of the earth for the purpose of profit. The word 'mines' and 'minerals' in any particular grant must be given the meaning which, judged from the whole of the deed, the parties might be taken to have intended (*Gandoo Mahanta Vs. Nilmonee Singh Deo*).[102]

In the two cases cited above (*Megh Lall Pandey vs. Rajkumar Thakur and Sriram Chandra Chakravarti vs. Hari Narain Singh Deo*) the question as to whether or not the principle underlying Section 108, Clause (0) of the Transfer of Property Act applied to permanent alienations without reservation was considered. In the former, Mr Justice Mukherjee held that it did not, and observed that the rule embodied in that section, *viz.*, that the lessee must not work mines and quarries not open when the

lease was granted, applied, as was obvious from the opening words of the Section, only in the absence of a contract to the contrary. In the latter case the Judges of the High Court came to the same conclusion, though on different grounds. "The provisions of Clause (0) of section 108 of the Transfer of Property Act" it was said in that case, "cannot even by analogy be safely applied to those tenures, for that clause prohibits a lessee from pulling down building or felling timber and yet it is wellknown that a permanent tenure-holder is not ordinarily restricted in those ways (Sec. 10 of Bengal Tenancy Act). Moreover, clause (p) of section 108 prohibits a lessee from erecting any permanent structure without the landlord's consent ; and yet it is a common place in the land-law of this country that the permanent tenure-holders can ordinarily build such structures on their lands, without the Zamindar's consent. It is only when there is an express stipulation depriving a permanent tenure-holder of a such rights that he is debarred from exercising them. It is obvious, therefore, that tenure-holders have rights which go very far beyond what the transfer of property Act allow to ordinary lessees. The inference would rather be that such tenure-holder possesses, in addition to those rights, which have been noticed, the right of working mines and quarries also,'

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Chapter II

CREATION AND DISSOLUTION OF PATNI

A patni taluk could only be created by the proprietor of a permanently settled estate. It had been defined in the Preamble as a taluk created by the Zamindar to be held at a *rent fixed in perpetuity* by the lessee and his heirs for ever. Consequently, it could not be created in a temporarily settled estate. A Commissioner of the Division enquired as to whether a *patni taluk*, which was a permanent tenure could be created in a temporarily settled estate. The Board referred him to section 2, Regulation XVIII of 1812, which implied that a proprietor was not competent to enter into engagement with Government. The proprietor of a temporarily-settled estate might create a permanent tenure, because his own proprietory right was permanent, but he could not create a permanent tenure at a fixed rent, because his own engagement with Government as regards the amount of the assessment was not a permanent one.[1]

Patni taluk could not be created by a lease including jote-jamas and other patni taluks. A settlement by a lease, which included certain jote-jamas as well as certain patni taluks and reserved an aggregate rent for the whole without apportioning any portion to the jote-jamas as distinguished from the patni taluks, could not properly be regarded as a patni tenure within the meaning of Regulation VIII of 1819 (*Hayes Vs. Rudranath Thakur*).[2]

Neither could it be created by a lease creating patnis in more estates than one. An application for the sale of some taluks for arrears of rent was refused by Collector as they were situated in more estates than one and therefore could not be regarded as *patni taluks*. The Commissioner, while upholding the Collector's Order, remarked that the estates being the property of the same Zamindar and the patnidars being by the condition of their *Kabuliyats* liable to sale for

B. U./Zamindars/64-12

arrears, the Collector might under this regulation have sold them up. *Held* by the Board, on appeal, that a tenure of this kind was not a patni tenure under the law, and the Zamindar had consequently no right to ask for the enforcement of the provision of that law in respect of recovery of rents. It was quite clear that a *patni* taluk being the offspring of an estate could not be more extensive than the estate itself. For each separate number of the tauzi of an estate, the Zamindar must have created a separate taluk if the privileges which the law provided for sale, etc. were to be enjoyed.[3]

If a patnidar took additional land not covered by the Kabuliyat, those land did not come under patni. By permitting a patnidar to take a quantity of land in addition to what was already held by him in patni, and by recovering rents from him for such additional land for a series of years, a Zamindar could not, in the absence of any Kabuliyat from the patnidar or verbal agreement giving him the extra land in perpetual lease, be debarred from resuming possession. Obviously, those lands did not come under *patni*. (*Kishore Bulluv Mitra Vs. Bistoo Chandra Ghose*).[4]

Patni conld not be created by a lease violating the rules against perpetuities. Whereas a Zamindar, by a patni pattah leasing out a Mouzah, exempted from its operation certain lands and covenated that on certain contingencies happening, the lessee should acquire a right thereto as patnidar, but no time was specified within which the contingencies were to happen in order to vest the right in the patnidar, it was *held* that such a convenant was void as it offended the rule against perpetuities even as between the parties to the covenant. (*Kumar-Keshab Chandra Roy Vs. Brindaban Chandra Maitra*).[5]

What happened when there was a *Benami* transaction? A suit was brought by the heirs of a deceased Zamindar to set aside two *patnis* created by him *benami* in the name of his daughters. It was *held* that (1) though the fund was advanced by the father, yet the advance must be presumed to have been made by way of provision for the daughters, and that the *patnis* were created *bonafide* in favour of them; (2) that, if

this were not so, the title of a *bonafide* purchaser for valuable consideration without notice of trust would be good against the heirs.[6] Where a patni was sold and purchased in the name of another, the real purchaser could be sued for rent. In *Prosunno Coomar Pal Chowdhury and another Vs. Kailash Chunder Pal Chowdhury and others.*[7] Kailash Chunder Pal Choudhury and others sued Gopal Chunder Mukherjee, Prosunna Coomar Pal and his wife in the Revenue Court for the rent due under a patni. The *patni* was sold for arrears of rent and purchashed in the name of the defendant Gopal, and afterwards the Zamindar treated Gopal as his tenant and petitioned to sell the patni for arrears of rent which became due after the sale, and which was alleged to be due from the defendant, Gopal Chunder. The rent was due and the patni was sold. The plaintiff then sued Gopal Chunder, Prosunna Coomar and his wife jointly in the Collector's court for subsequent arrears, alleging that the estate was purchased by Prosunna Coomar Pal and his wife in the name of Gopal Chunder, *benami*, for them. *Held* by the Full Bench that the present suit was not barred by the proceeding under Regulation VIII of 1819, and the fact that the plaintiff (Zamindar) had treated Gopal Chunder as the tenant when he was not aware of the whole circumstances of the case would not stop him from treating other persons as his tenants afterwards when he knew of those circumstances, if the facts showed that the other parties and not Gopal Chunder were the tenants.

New purchaser of a Zamindari would have to accept the existing patni Kabuliyat as granted and given. He was not entitled to demand a fresh Kabuliyat from a Patnidar. In *W.J. Beakwith Vs. Thakoor Dass Gossain,*[8] where the plaintiff purchased a Zamindari at a sale in execution of a decree and brought a suit against the defendant, who was a patnidar within the Zamindari, to obtain a Kabuliyat for the patni, it was *held* that neither under the provision of Act X of 1859, nor under any other law, was the plaintiff entitled to maintain such a suit. "If the *patni tenure* has been created, and is in

existence", remarked the Judges, "the original *patni pottah* and *Kabuliyat* are sufficient to evidence the title of the patni, and do not require renewal upon the transfer either by sale or otherwise of the Zamindari. If the plaintiff has lost, or has not obtained possession of, the original Kabuliyat from the Zamindar, it may be that upon proper allegation and evidence and possibly upon a sufficient indemnity being given, he is entitled to sue for the execution by the patnidar of a new *Kabuliyat* in the precise terms of the former one. But that is not the object of the present suit. He assumes that, merely as purchaser of the Zamindari, he is entitled of course to sue in the Collector's Court to obtain from the patnidar a fresh *Kabuliyat*. We think he is entitled to no such remedy."

Several instances of such decisions can be mentioned. Where the proprietors of a mahal had agreed with an ijaradar that in the event of their granting a patni to anybody, he should have the refusal, and notwithstanding their agreement, a Patni to another ijaradar, it was *held* that the latter having been no party to the stipulation was not bound thereby, and that the patni granted to him cannot be set aside (*Komol Lochon Dass Vs. Dwarka Nath Chowdhury*).[9] This case was brought again to the notice of the High Court[10] on the ground that the defendant at the time of taking the patni, had notice of the agreement existing between the plaintiff and the Zamindar, and that if he had such notice, he could not in equity maintain the lease which he obtained to the prejudice of the plaintiff. The Judges held that where A, taking a patni to the prejudice of B, had notice of an agreement existing between B and the Zamindar, he could not in equity maintain the lease which he had obtained but B would be entitled to relief against him. Where A leased an estate in patni to B taking a bonus of Rs. 500 with the agreement that, if he wished at any time to hold the property *khas*, B should restore the property on receiving that sum back from A, it was held that A cannot sue to recover possession for the purpose of leasing it to a third party (*Raghoonath Vs. Hurrish Chunder*).[11]

The fact of a patnidar having made separate payments of

rents, of having registered his name with each of the shares and of having prepared to enter into a fresh engagement with one of them—all such actions did not amount to a cancellation of the original lease and the substitution of a new one (*Shyam Chand Vs. Juggut Chunder*).[12]

What was the legal framework within which the Zamindari right of creating patni tenures could be exercised by (a) the widow of the Zamindar, (b) Zamindar's widowed mother, (c) a shebait, and (d) a mortgagor ? Let us prove them one by one.

Creation of patni tenure by a widow was valid under certain circumstances. A Hindu widow could not be a tenant for life, but only the owner of her husband's property subject to certain restrictions on alienation and subject to its developing upon her husband's heir on her death. She might, however, alienate it subject to certain conditions being complied with. (*Bejoy Gopal Mukherjee Vs. Krishna Mahishi Debi*).[13] The test as to the validity of an alienation made by her was whether the alienation could be shown to had been reasonably necessary for the due administration of the estate ; whatever could not be shown to be necessary for that purpose could not be considered incidental to a general power of management (*Joymohun Vs. Edulji*).[14]

So in *Bissonath Chunder Vs. Radha Kista*[15] it was held that a patni lease of certain lands, granted by a Hindu widow while in possession, was in no respect invalidated by the fact that her equity suit was pending at the time. The *patni* lease would be valid when legal necessity existed or the estate benefitted. If there was no legal necessity to justify the alienation, the patnidar acquired no more than the life-interest of the widow ; but if there was, then a subsequent purchase was subjected to the pottah granted by the widow as a valid alienation of a prior date. In *Dayamani Debi Vs. Srinibash Kundu*,[16] the High Court, following the principle laid down in *Hanooman Prosad Pandey Vs. Massamat Babooee Munraj Koonwaree*[17] and *Rameshwar Pershad Vs. Run Bahadur Singh*[18] *held* that a Hindu widow, as regards, the management of her husband's estate, had not less power than the manager of an infant's estate and the reversio-

ners were not entitled to set aside a permanent lease granted by her, which was found to be for the benefit of the estate and by which they were found to have benefitted.

Even where there was no legal necessity a Hindu widow could make a valid alienation of either the whole of her interest or of a portion with the consent of the male reversioner. In *Nabo Keshore Vs. Harinath*[19] the Full Bench laid down broadly: under the Hindu law current in Bengal, a transfer or conveyance by a widow upon the ostensible ground of legal necessity, such transfer or conveyance being assented to by the person who at the time is the next reversioner, will conclude another person not a party there to, who is the actual reversioner upon the death of the widow, from asserting his title to the property. In the case of *Hem Chunder Vs. Surnomoyi*[20] it was expressly said : The widow may convey to the reversioner or to a third party, with the consent of the next reversioner, the whole or any portion of the estate, and the transferee will acquire an absolute interest.

The case of *Vinayak V. Govinda,*[21] was another authority for holding that a Hindu widow might alienate portions of her husband's property with the consent of the next reversioners. The same view was taken in the case of *Sankar Nath Mukherjee Vs. Bejoy Gopal Mukherjee,*[22] where it was held that apart from legal necessity a Hindu widow could validly alienate property that had devolved on her from her husband with the consent of the reversioners. She could make such an alienation by the entire surrender of her own interest or part with her direct interest in the estate and could convert it into an annuity. Subject to the payment of the annuity, the transferee would acquire an absolute interest. The fact that some of the parties interested accepted the arrangement subsequently to its being agreed on between the others would not affect its validity. Ordinarily, the consent of the whole body constituting the next reversioner, should be obtained though there might be cases in which special circumstances might render the strict enforcement of this rule impossible. The consent of the reversioner was effective even when given after the execution of the deed of

transfer (*Bajranyi Singh V. Monokarnika Baksh Singh.*[23] Also in the case of *Radhashyam Vs. Joyram Senapati*[24] this view was upheld. An alienation of her husband's estate by a Hindu widow without legal necessity but with the consent of the next reversioners who, if they had succeeded to the estate, would themselves have been entitled to the limited estate of a Hindu widow did not, however, pass an absolute estate to the transferee (*Bepin Behari Kundu V. Durga Charan Bandoyadhyay*).[25]

It should be noticed that the grant of a *patni* by a Hindu widow was not void but voidable. A widow in possession of her widow's estate in a Zamindari made a grant of a patni tenure under it to a lessee at a rent. A suit was brought by the reversionary heir or her death to have the grant set aside as invalid as against him. The patni lease was not proved to have been made with authority, or from necessity justifying the alienation by the widow. *Held* that the patni was, on the death of the widow, only voidable and not of itself void, so that the plaintiff, the next inheritor of the Zamindari, might then elect to treat it as valid (*Madhu-Sudhan Singh V.E.G. Ryyke*).[26] So also in *Hayes V. Horendro Narain,*[27] it was decided, following the last case, that the creation of a patni taluk by a Hindu widow without legal necessity was not void, but only voidable, and may be validated by the consent of the reversioner. In *Bejoy Gopal Mukherjee V. Krishna Mohishi Debi*[28] again it was ruled, by their Lordships of the Privy Council, that an alienation by a Hindu widow was prima facie voidable at the election of the reversionary heir. He might think fit to affirm it or he might at his pleasure treat it as a nullity without the intervention of any Court. The power reposed in the reversioner of validating an invalid alienation by a Hindu widow was, however one which he was not competent to delegate to his executors (*Hayes V. Horendro Narain*).[29]

The question, therefore, arose, what would amount to an election to treat the lease as valid by the reversioner, In *Madhu Sudhan Singh V. E. G.* Rooke,[30] referred to above, the facts that the plaintiff had accepted rent in respect of the patni tenure, and that the tenure, had been speci-

fied in a petition which accompanied the patnidar's deposit of rent in the Civil Court under Sec. 61 of the Bengal Tenancy Act (VIII of 1885) were held *prima facie* to be an admission that the patni was still subsisting. In the absence of evidence to put a different construction upon the plaintiff's act and to negative its effect, there was, it was said, in that case, a sufficient *prima facie* case of an election to affirm the validity of the *patni*. In *Bejoy Gopal Mukherjee V. Krishna Mahishi Debi*[31] it was decided that by instituting a suit for possession, a reversioner showed his election to treat the alienation as a nulity. The reversioner might affirm the alienation or treat it as void without the intervention of any court, there being nothing to set aside or cancel as a condition precedent to his right of action.[32]

Now the case of the proprietor's widowed mother. It was doubtful whether a proprietor's widowed mother could grant a valid permanent lease. In *Bunwari Lall Roy V. Mohima Chunder Koonal and others*[33] which was a suit for *khas* possession and for a declaration that certain *patni pottah* was invalid, and where the plaintiff claimed, as the adopted son of the late proprietor's widow to set aside a pottah which had been given by the late proprietor's mother it was *held* that though rents had been received, receipts given, and proceedings taken by both the adoptive mother and the adopted son as if there was a valid patni, the plaintiff was entitled to the declaration sought, the patni having been granted by a person who had no interest in the estate. In *Bonomali Roy V. Jagat Chandra Bhowmic*,[34] however, the Judges or the High Court expressed an opinion that a lease granted by the proprietor's widowed mother in the course of the management of an estate was only voidable, and that, if it was granted for legal necessity, it was absolutely good and could not be set aside. The case went upto Privy Council, but their Lordships refused to express an opinion as to whether or not such a lease was in law binding. The law on this point, was, therefore, quite uncertain.

Let us discuss the limitations which existed in case of an alienation by a Hindu widow. In order to set aside a perma-

nent lease granted by a Hindu widow, the reversioner must have brought a suit within a certain time. The law under the Acts was that the suit must have been brought within twelve years from the date on which the cause of action arose. In *Samboo Nath Saha V. Bunwaree Lall Roy*,[35] where a Zamindar (G) died in 1240, leaving a widow, B, and his mother, H, the latter of whom created a patni pottah in 1241, under which B received the rents from 1257 to 1273 from the principal defendant, and where the plaintiff, as the adopted son of G and the owner of the Zamindari, sued the patnidar to set aside the patni, it was held that, if the creation of the patni was illegal, B, as the heiress of G, had a immediate right to sue to set it aside, and that if she did not and lost her right by lapse of time the plaintiff's right of action must have accrued on his adoption in 1252. Also held that, though mere receipt of rent under a void or voidable lease would not operate as a confirmation of it, or showed that the lesses held possession of the land at the time, yet if, with full knowledge of the existence of the patni pottah, rents were claimed on behalf of the plaintiff and proceedings taken, under Regulation VIII of 1819, to enforce payment of rents, as reserved on a patni tenure, by B at a time when she was acting as manager during the the plaintiff's infancy from 1257, and the plaintiff, on coming of Act XIV of 1859 would apply to his suit.

The same view was taken in the case of *Bonomali Roy V. Jagat Chandra Bhowmic*.[36] In that case a patni lease of a portion of a Zamindari was granted to the predecessors of the defendants by a proprietor's widow, A, who had at that time no estate in property, but was acting as manager for B, the widow of her adopted son and the legal owner, and it was recited in the deed creating the tenure that the consideration-money was to pay the government revenue then due. B in 1846, adopted a son who was the father of the plaintiff. He attained his majority in 1866 and died in 1880. By *ekrars* made between her adopted son and B, she was allowed to remain in possession of the property in suit for life. A died in 1848 and B in 1894. The High Court held that a suit, brought in 1897, to set aside a patni

lease was barred, and that it should have been instituted at the latest, within 12 years of the date on which B's adopted son attained his majority.

The decision was confirmed by the Privy Council and their Lordships observed : 'If the *patni* was void, the period of limitation ran from the date on which it was granted under Regulation II of 1803, as amended by Regulation II of 1805, which was then in force. But if it was voidable only by Brajeshwari's (B's) successor, the right of action arose on the adoption of Bunwari Lall (B's adopted son), and time would begin to run against him from the date when he attained his majority in 1856'.

Again, a Hindu widow granted a permanent lease of certain immovable property belonging to her husband's estate, and after the alienation, adopted K in the year 1857, who died in 1862 after attaining majority, leaving his widow, S, who succeeded him. S died in 1899, and the plaintiffs as reversionary heirs of I, instituted this suit for setting aside the alienation and establishing their *right*. Held that the cause of action accrued under Sec. 14, Regulation III of 1793 (which was then law in force), in 1857, the date of the adopting of K, or in 1862 when K died major and that the suit being brought 12 years after that, it was barred (*Amrīta Lall Bagchi V. Jotindro Nath Chowdhury*).[37]

The same principle, as in the case of Hindu widows, applied to alienation by Muhammadan widows as well. In *Mofazzal Hossein V Basid Sheik*[38] it was held that although, according to the Muhammadan law, the mother of a minor is not the guardian of his property yet, if she deals with the minor's estate, her acts, if they are for the benefit of the minor, should be upheld. So also iu *Ramcharan Sanyal V. Anukul Chandra Achariya*[39] was decided that, when a Muhammadan widow acting as the *defacto* guardian, purported to deal with the minor's property, the transaction, if it was for the benefit of the minor, ought to stand in the absence of fraud or any othe element of that nature. This also was the judgement in *Hasan Ali V. Mehdi Hossein*[40] and *Majidan V. Ram Narain.*[41]

It was at one time doubtful whether the grant of a patni lease by a *Shebait* was valid or not. In *Mati Dass V. Modhu Sudhan Chowdhury and others,*[42] the judges remarked as follows: 'The question now before us is, whether the plaintiff is entitled to a decree for a specific performance of the contract alleged, which is that the defendant shall grant a patni lease of certain property. The property was bequeathed to the defendant by a will subject to certain religious trusts in favour of an idol, and the testator by his will prohibited any transfer of the property by sale or gift. The defendant, it is alleged, has contracted with the plaintiff to grant him a patni of the property, receiving by way of bonus Rs. 800. The grant of such an interest is an approach at least to an alienation, permanently of a portion of the property. It is by no means clear to us that, either under the terms of the will in this case or by law. It is competent to the manager of an endowed property to grant a patni thereof. This doubt alone, without actually going the length of saying that such an interest cannot be lawfully given by such a person, is a sufficient ground for disposing of the present suit, because if there is any legal doubt whether the defendant can duly create an interest of this sort in an endowed property, we certainly ought not to enforce the contract for specific performance against him. It was, however, settled law that such a grant was not necessarily void, provided that it was made on account of unavoidable necessity. In this respect the power of a mohunt or a *shebaīt* was similar to that of a manager of an infant heir's property. This was the view which had been taken in several cases. In *Tahboonisso V. Kumar Sham Kishore Roy*[43] it was *held* that the grant of a patni tenure by a *shebait* might be valid and that, under the Hindu Law, the shebait or trustee manager of an endowment, was competent to alienate a reasonable portion of the property, if such an alienation was absolutely required by the necessities of the management, e.g. for the restoration of an image or for the repair of the temple. In *Doorganath Roy V. Ram Chandra Sen*[44] a *mukarari pottah* of *devottar* lands was supported on the ground that it was granted in consideration of money said to be required for the repair and

completion of a temple, for which no other funds could be obtained. But ia *Abhiram Goswami V. Shyama Charan Nandi,*[45] where a mohunt granted a permanent lease at a fixed rent without any legal necessity, it was *held* by their Lordship of the Privy Council that on the most favourable construction, the grant could only continue for the life-time of the grantor and that it was not binding on his successors. The same view was taken in the case of *Nitya Gopal Sen V. Mani Chandra Chakraborty.*[46] where it was ruled that a permanent lease of *debuttar* property was void if it was not excuted for legal necessity. The general principle to be followed in considering the validity of such grants was laid down in the case of *Shibessouree Debia V. Mathora Nath Acharjo*[47] where it was said that, apart from such unavoidable necessity, 'to create a new and fixed rent for all time, though adequate at the time, in lieu of giving the endowment the benefit of an augmentation of a variable rent from time to time, would be a breach of duty in the *mohunt* or *shebait.*'

The period of limitation in such grants was not governed by Arts 134 of Sch. II of the limitation Act (XV of 1877), but by Sec. 10 of the Act (*Abhiram-Gowwami V. Shyama Charan Nandi.*)[48] So also where a suit was brought by the Rajah of Panchkote, as the shebait of certain Hindu deities, to recover possession of dubuttar property, which had been leased in patni more than 12 years before the insitution of the suit by the plaintiff's predecessor in title, it was *held* that (reversing the decision of the High Court) the suit was not barred by limitation under Art. 134 of Sec. II of Act XV of 1877, the lesses not being the purchasers of an absolute title, and therefore not "purchasers" within the meaning of that Article (*Iswar Shyam Chand Jin V. Ram Kanai* Ghose).[49]

Could such subinfeudation take place on a property already mortgaged? Where the rights and interests of a mortgagor were sold in execution of decree declaring the mortgaged property liable for the mortgage-debt, it was *held* that a patnidar who had obtained a *pottah* from the mortgager subsequently to the mortgage and in violation of its condi-

tions, had no right or title to hold possession against the purchaser. The purchaser in such a case bought the rights and interests of the judgement debtor as they stood at the time of the hypothecation, and not as they stood at the time of sale (*Brojo Kishori V. Mohammed Salim*).[50] So also in *Jorra Gazi V. Aboo Khalifa*[51] where certain mortgage were in existence at the time a patni was granted, it was held that the interest under patni did not pass. A *patni* lease created in fraud of creditors but with the consent of the subsequent mortgagees was void. In *Jotindra Mohan Tagore V. Brojo Sundari* Debee and others.[52] Raja Bhoirub Indranaraian died leaving a widow, Brojosundari Debee. By virtue of will executed by her husband, the defendant was authorised to create *patni* tenures and to perform all other acts for the benefit of the estate, and on the 9th Ashar (22nd June 1857) she granted patni leases—one of Mouza Pootia to Sree Nath Moitra, and the other of Mouza Baroipara to another party. These *patnis* were granted in order to enable the defendant to pay off, from the bonus received, some of the more pressing of her husband's debts, who died heavily involved. The Raja's estates were mortgaged as security for the loans he had incurred; and ultimately the property was sold, with the consent of the mortgages, by the master of the Supreme Court and purchased by the plaintiff. On taking possession of the property, the plaintiff discovered the newly ereated *patni* which he sued to set aside on the ground that it had been fraudulently created by the *Rani*, subsequent to the mortgage in the name of her relatives. The *patni* leases were set aside and it was *held* that a *patni* may be set aside as invalid and made in fraud or creditors, notwithstanding the acquieseence of subsequent mortgagees.

This was all about the creation of *patni.* Now, how it could be destroyed? Or, what was the legal framework of relinquishment and surrender of patni? A patni could not be relinquished without the consent of the landlord, and a *patnidar* could not put an end to the contract at his own option. So in *Hira Lall Pal V. Nilmoni Pal & others,*[53] it

was *held* that it was not open to a *patnidar* of his own choice to throw up the *patni*, and, by so doing, escape his liability to pay rent, "We do not say", remarked Jackson, J., that the contract (between the Zamindar and his *patnidar*) is indissoluble, because many circumstances might arise in which the interference of a Court of Justice might fairly be invoked to put an end to it ; but the dissolution of such a contract must, we think, be an act of the Court and the result of a proper enquiry, and cannot be taken by the *patnidar* alone, and pleaded in answer to a suit for rent.

So also in *Govinda Nath Guha Chowdhuri V. Surja Kanta Lahiri*[54] the Court observed : where a Zamindar finds that the *patnidar* or other permanent tenant, after having allowed a trespasser to hold adverse possession of any land included in the permanent tenure for more than 12 years, offers to relinquish it, the Zamindar can always refuse to accept the relinquishment ; and if the rent remains unpaid, he can bring the tenure to sale for arrears of rent, and the purchaser at such sale would be entitled to avoid any incumbrance created by the defaulting *patnidar* and would not be bound by any adverse possession held against the latter. A obtained a *patni pottah* in the year 1252 of the whole 16 as, of a Zamindari from B, C and D. Subsequently, obtained a decree for a 4 annas share of the Zamindari and afterwards leased her 4 annas share to A. D then sued the raiyats for rent, not as Zamindar, but as *ijarradar* of E's share in the *patni*. Held that the patnidar not having been a party to the suit by E and this not being a suit by D as *patnidar*, but as ijaradar of the share obtained by E under her decree, D was not entitled to get rid of the *patni, qua* this 4 annas share, by a suit in this shape, and that the patni must be upheld until set aside by a regular suit (*Raj Chandra Roy Choudhury and others V. Annoda Prasad Mukherjee & another*).[55] But if a permanent tenure was relinquished, and the Zamindar accepted the relinquishment, neither the tenure-holder nor any one under him could reclaim it. A voluntary abandonment for a long period without inevitable major or other cause beyond

the power of the holder was considered to be equal to an express relinquishment (*Chunder Monee V. Shumbhoo*).[56]

Let us digress a little and consider the effects of Bengal Tenancy Act on patni tenures if these tenures are dissoluble by the enactment of the Bengal Tenancy Act of 1885. It must be mentioned that the patni Regulations were kept outside the operation of the Bengal Tenaney Act, Act VIII of 1885, by Section 195(e) of that Act. That Section provided : Nothing in this Act shall effect any enactment relating to *patni* tenures, in so far as it relates to those tenures. "The object of Section 195(e)", observed the Judges in *Durga Prosad Bandopadhyay and others V. Brindaban Roy and others,*[57] is that nothing in the Bengal Tenancy Act should interfere with the *patni* law in respect of patni tenures, but in other respects the Bengal Tenancy Act should be held to apply as supplementing the *patni* law. So, where the plaintiffs, who were the sons and representative of one Peary Mohan Bandopadhyaya who had died in Falgoon 1295 (February-March, 1889), brought a suit for the recovery of the arrears of rent from 1293 to Pous 1295 for lands held by the defendants within their ancestral *patni taluk*, and where the defendants contended that the plaintiffs, not having complied with the provisions of Section 15 of the Bengal Tenancy Act, could not recover any rent payable by them as holders of the tenure by suit in court, it was *held* that Sections 15 and 16 of the Bengal Tenancy Act applied to *patni* tenures. "Under section 16 of the Bengal Tenancy Act", observed the District Judge (and his observations were quoted with approval by the High Court), it is only the rent payable to a person entitled to a permanent tenure by Succession as the holder of the tenure, which cannot be recovered by suit until the provisions of Section 15 have been compiled with. But the plaintiffs are not entitled to the arrears of rent due for the period prior to Falgoon 1295 as the holders of the tenure. They are entitled to these arrears as the representatives of their father's estate, which it is not denied that they are.....I, however, agree with the Munsif that, as regards the rent accruing subsequently

to Falgoon 1295, they cannot recover this rent, until they have complied with the provisions of Section 15 Act VIII of 1885, which, it is admitted, they have not done. I have been referred to the provisions of Section 195(e) of Bengal Tenancy Act and to the case of *Gyanado Kanto Roy Bahadur V. Bromomoyi Dassi.*[58] I do not, however, think they affect the matter. Section 195(e) merely lays down that nothing in the Tenancy Act shall affect the provisions of Regulation VIII of 1819. Regulation VIII of 1819 provides no procedure for the registration of changes in the holders of *patni* tenures which are affected by death and operations of law. The provisions of Section 5 of the Regulation, which lays down that a Zamindar shall not be competent to refuse to resister and otherwise give effect to alienations by discharging the party transferring his interest from personal liability, and by accepting the engagements of the transferee, but that he shall be entitled to exact a fee upon every such alienation, clearly apply only to voluntary alienations, and not to successions and transfers by operations of law. There is nothing in Regulation VIII of 1819 about changes by succession and operations of law. It is not said that the Zamindar must recognise such changes, or is entitled to exact a fee for registering them. Hence, the provisions of Section 15 of the Bengal Tenancy Act, which do prescribe such a procedure cannot be said in any way to affect any provision of any enactment relating to *patni* tenures. For similar reasons the ruling in *Gyanada Kanto Roy Bhadur V. Bromomoyi Dassi* does not apply to these cases. In that case it was laid down that Section 13 of Tenancy Act does not apply to *patni taluks*, for there is a special procedure laid down in Regulation VIII of 1819 for the admission to registry of voluntry transfers of such tenures. But that ruling does not lay down that Section 15 of the Tenancy Act shall not affect *patni* tenures. If the provisions of Section 15 of the Bengal Tenancy Act be given effect to in respect to successions to *patni* tenures, there will be no anomalous dual registry to press hardly on the heirs and representatives of deceased *patnidars*. Hence, I see

no reason why the provisions of Section 16 of Bengal Tenancy Act should not be held applicable to the suit so far as the rest claimed for the period after Falgoon 1295 is concerned. (*Durga Prosad Bandopadhyaya and others V. Brindabun Roy and others.*[59] So also in *William Sheriff V. Jogmaya Dassi and others,*[60] where a suit for arrears of rent for the year 1299 B.S. to Falgoon 1302, B.S. was brought by *patnidars* on the death of the last owner on the 14th Aghran 1302, B.S., and where the defence of the *darpatnidar* mainly was that the plaintiffs not having complied with the provisions of Section 15 of the Bengal Tenancy Act, the suit was not maintainable, it was *held* that as the plaintiff did not claim the rent, which fell due during the life-time of the last owner, as the holders of the tenure but claimed it either as the representatives of the holder of the tenure for the time being, or as representatives of their father the rent became and increment to the estate of the father, and, therefore, the suit was maintainable.

The provisions of Section 13 of the Bengal Tenancy Act, however, did not apply to *patni* tenures. In *Gyanada Kanto Roy and others V.* Bromomoyi Dassi[61] the interest of the defendants in the *patni* was sold in sxecution of tne decree (other than a decree for arrears of rent due in respect thereof) on the 12th Falgoon, 1203, and was purchased by one Bromomyoi Chaudhurahi, who, by virtue of her purchase, obtained possession of the *patni.* and deposited in Court what is called the landlord's fee and the further see for service of notice of sale on the landlord as required by section 13 of the Bengal Tenancy Act. Bromomoyi Chowdhurani was in possession since the purchase, but the notice, or the fee was not proved to have bsen received by the plaintiff. The plaintiff refused to recognise the sale and brought a suit against the defendants for arrears of rent of the *patni taluk* from Kartik 1293 to Aghran 1294 (i.e. for the rent which had accrued subsequent to sale), contending that section 13 of the Bengal Tenancy Act had no application, because the rules to be observed on the transfer of a *patni* tenure were contained in Regulation VIII of 1819 which was under section 195(e) of

the Bengal Tenancy Act, not affected by that Act, and that as the rules of the Regulation as to registration of the purchase had not been observed by the purchaser, he was not bound to recognise the sale, and that she was entitled to recover arrears of rent from the defendants, who were the heirs of the *patnidar* whose name was recorded in his books. *Held inter alia*, that Regulation VIII of 1819 is not affected by the Bengal Tennancy Act of 1885, the Regulation specially saved from its operation by section 195(e) of that Act. "There remains the questions", observed the Court, 'whether Section 13 of Bengal Tenancy Act has any application to the present case. If it has, then this curious state of things will arise that, under the enactments at present at force (Regulation VIII of 1819 has not been repealed), there will be two totally different systems of registration of certain transfere of *patni* tenures. The Bengal Tenancy Act has introduced what may be called a system of public and official registry of transfers of permanent tenures under which the landlord's fee has to be paid to, and the notice of transfer to be served on him through the medium of the District Court, while under the law relating to *patni* tenures, the registration of transfers is of a private nature, as it has to be made in the *Sherista* of the Zamindar, and the prescribed fee has to be paid or tendered directly to him without the intervention of any public officer. If this dual system be in force, then the purchaser in the present cases would have the option of following the procedure provided in Section 13 of the Tenancy Act instead of proceeding under the *patni* Regulation,—a procedure which is clearly in derogation of the right of the Zamindar under regulation VIII of 1819 to have the transfer registered in his books in accordance with the rules therein laid down, and which, therefore effect an enactment which is specially saved from the operation of the Bengal Tenancy Act by Section 195(e) of that Act.'

The principle deducible from these rulings had been summed up by Mr Justice Mitter in his '*Land Laws of Bengal*' as follows: "In matters in which the Regulation, as it now stands with the amendments, is silent, Act X of 1859 and the

other Acts, dealing with the incidents of the relationship of landlord and tenant, furnish rules of substantive law and procedure; but the express provisions of the Regulations have not been, in any way, affected by them."

Observed however, that *darpatni* tenures were not included within the terms of clause (e) of Section 195. 'The words in so far as it relates to those tenures must, we think, be treated as expressly limiting the provision to enactments relating to *patnis* properly and strictly so called, and as intended to exclude those which relate to tenures, which, although resembling *patnis*, as *darpatnis*, etc. are not strictly *patnis*, not possessing all the qualities of them' (*Mahomed V. Broja* Sundari) [62] Section 13 of Bengal Tenancy Act, therefore, applies to sales of *darpatni* tenures in execution of decrees (*Mahomed Abbas Mandal V. Broja Sundari Debi*).[63]

CHAPTER—II

1. Board's Miscellaneous Proceedings of the 13th August, 1881, No. 196, Collection 7, File 2883 of 1881
2. I. L. R., 33, Cal., 281
3. Board's Miscellaneous Proceedings of 3rd August, 1889. No. 214, Collection 7, File 171 of 1889
4. 12 W. R., 188.
5. 14 C. W. N., 601
6. Hay's Report 630; Marshall's Report 564
7. 8 W. R., 428
8. I. L. R., 174
9. 10 W. R., 254
10. 10 W. R., 414
11. Spl. W. R., 326; L. R., 102
12. 22 W. R., 50
13. I. L. R., 34, Cal., P. C. 329
14. I. L. R. 22, Brom. 77
15. 11 W. R. 554; 1 Hay 339; Marshall, 113
16. I. L. R., 33 Cal, 842
17. M. I. A., 393
18. I. L. R., 6 Cal., 843
19. I. L. R., 10, Cal., 1102

20. I. L. R., 22, Cal.' 354
21. I. L. R., 25 Brom, I29
22. 13 C. W. N., 201
23. 12 C. W. N. P. C., 74
24. I. L. R., 17, Cal., 896
25. 12 C. W. N., 914
26. I. L. R., 25 Cal., P. C. I. ; L. R. I. A. 164 ; I. C. W. N., 433
27. I. L. R., 31 Cal., 698
28. 11 C. W. N., 424 ; I. L. R., 34, Cal., P. C. 329,
29. I. L. R., 3I, Cal., 698
30. I. L. R., 25, Cal., P. C., 1 ; L. R., I. A., 164 ; I C. W. N. 434
31. I. L. R., 34, Cal., 329
32. Ibid.
33. 13 W. R., 267
34. I. L. R., 32 Cal., 669
35. 11 W. R., 102
36. I. L. R., 32 Cal., 669 ; I C. L. J., 319
37. I. L. R., 32 Cal., 165
38. I. L. R., 34 Cal., 36 ; 4 C. L, J., 485 ; 11 C. W. N., 77
39. I. L. R., 34 Cal., 65 ; 11 C. W. N., 160 ; 4 C. L., J 578
40. I. L. R., 1 All., 533
41. I. L. R.. 26 All., 22
42. I. W. R., 4
43. 15 W. R., 228
44. I. L. R., 2 Cal., 341 ; L. R., 4 I. A., 52
45. I. L. R., 36 Cal., P. C., 1003
46. 12 C. W. N., 63
47. 13 Moo, I. A. 270, 275
48. I. L. R., 36 Cal., 1003 ; L. R., 36 I. A., 148
49. I. L. R., 38 Cal., P. C. 526 ; 15 C. W. N., 417 ; 3 C. C. C. L., 431
50. 10 W. R., 151
51. 21 W. R., 427
52. I. W. R., 262
53. 20 W. R., 383
54. I. L. R., 26 Cal., 460
55. 17 W. R., 221
56. Spl., W. R., 270
57. I. L. R., 19 Cal., 504
58. I. L. R., 17 Cal. 162
59. I. L. R., I9 Cal., 504
60. I. L. R., 27, Cal., 535
61. I. L. R., 17 Cal., 162
62. I. L. R., 18 Cal., 360
63. I. L. R., 18 Cal., 360

CHAPTER III

SUBINFEUDATION OF THE SECOND DEGREE : DEVOLUTION OF PATNI RIGHTS

The Section 4 of Regulation VIII of 1819 provided for the legal frame-work and the scope for second degree subinfeudation. Inferior tenures under similar title deeds conferred similar interest to that provided for *patni taluks* in section 3. The section 4 stated as follows :

If the holder of a *patni taluk* shall have underlet in snch manner as to have conveyed a similar interest to that enjoyed by himself, as explained in the preamble to this Regulation the holder of such a tenure shall be deemed to have acquired all the rights and immunities declared in the preceeding section to attatch to patni taluqs, in so far as concerns the grantor of such undertenure.

The same construction shall also hold in the case of *patni* taluqs of the third or fourth degree.

Darpatni was a taluk created by a patnidar to be held at a rent fixed in perpetuity by the lessee and his heirs for ever. Only a permanent holder of patni could create a *Darpatni.* So also none else than the holder of a *Darpatni* could create a *Se-patni.* The mere fact of a person having been in possession of lands for 12 years paying rent was not sufficient to establish a *darpatni* tenure, although the defendants upon this ground might claim some right in the nature of a right of occupancy, or they might urge that they could not be summarily ejected in a suit of this character. (*Ram Kulp Bhattacharjee V. Tara Chand*).[1]

Where a patni was found to be *benami*, a *bonafide Darpatni* did not necessarily lapse (*Dwarka Nath V. Srigopal*)[2] "We think". observed the judges in this case, "the plaintiff could have successfully pleaded his right to possession against the purchaser of the rights and interests of the defendants, the

ex-Zamindar and *patnidar*, as represented by the purchasers of the decree, by urging the priority of his *darpatni* right. The plaintiff could have shown that, at the direction of the ex-proprietor and with the knowledge of the *benami* nature of the patni lease (albeit, perhaps, without full knowledge of the reason of the *benami*) and being assumed either by the words or the conduct of the said ex-Zamindar that the *patni* was a rightful one, he had paid a valuable consideration for his *darpatni*. It does not follow by any law and precedent that, because the higher tenure is found to be a *benami* transaction of the debtor, the *darpatni* tenure, if the plaintiff acquired it bonafide, is to be lapsed.'

Now to the transfer of *Darpatni tenures*, Darpatnis were as much alienable as the Patnis. no more and no less. It was observed that the previous of section 13 of the Bengal Tenancy Act applied to the sales of *darpatni* taluks in execution of decrees, as the provisions of section 195, clause (e), applied only to enactments relating to *patnis* properly and strictly so called, and must be treated as excluding those which related to tenures which, though resembling *patnis* as *darpatnis* etc. are not strictly *patnis*, not possessing all the qualities of them (*Mahomed Abbas Mondal V. Brojo Sundari Debya*).[3]

In *Lakhi Narain Mitter & another V. Sitanath Ghose & others*[4], the plaintiff, a *patnidar*, sued the defendant, a registered *darpatnidar*, for rent. The latter asserted that he had sold his *Darpatni* to one Soudaminee. The patnidar, however, refused to acknowledge her. The *patni* having been advertised for sale for arrears, the balance was paid by Soudaminee not on account of the *darpatnidar* but in her own name, her object being to establish her position as *darpatnidar*. The *darpatnidar* contended that this payment made by Soudaminee should be deducted from the rent due by him. *Held* that he could not do so. "Till Soudaminee establishes her interest in the estate and obtains registration," it was said, all payments made by her are those of a mere volunteer and Sitanath can claim no deduction for payments made by another person not on his account. In fact the struggle has throughout been to force

plaintiff to recognise Soudaminee : and till Soudaminee has a legal status, whatever she pays otherwise than on account of Sitanath is paid at her own risk. Sitanath cannot have credit for the payments.

The decision has, however, been overruled in *Lakhi Narain Mitter & others V. Khetra Pal Sing*.[5] In that case, a *darpatnidar* paid some money to save the superior patni from sale, and sued for refund. It was contended that the *darpatnidar* had not conformed to the requirements of section 5 of the Regulation, that is to say, that he had not furnished security or paid a fee or obtained registration of his name according to the forms laid down in that section ; and that, therefore, not being a *darpatnidar*, he was not entitled to claim a refund. *Held* by the High Court that the *darpatnidar* was entitled to a refund even though his name was not registered in the office of the superior landlord. "There may be cases", remarked the judges, "in which a party may become the purchaser of a *darpatni* and the superior estate may be put up for sale and sold before he could possibly have time to effect the registration of his *darpatni* rights. Can it be said that in cases of this description, if the *darpatnidar* paid a sum of money on account of the rent due to the superior holder and saved the patni from sale, he would not be entitled to a refund of the sum so paid ? The subordinate holder has an interest of his own to protect, which would be altogether sacrificed if he were not able to save the superior tenure from the hammer, for, with the superior tenure all subordinate tenures fall in the event of sale ; and, after all, the duties of the subordinate holder, as prescribed by the Regulation, are formalities. Their primary object is to give the superior holder information of who is his tenant ; and, until they are conformed to, the superior holder is justified in looking to the registered tenant for his rent". *Held* also that, in view of the section 5 of the Regulation, which said that it should not be competent to the Zamindar or other superior holder to refuse to register and otherwise to give effect to alienations which all *patnidars* and *darpatnidars* had a right to make without the consent of the

Zamindar, the status of a *darpatnidar* did not depend upon the registration or consent of the Zamindar.

This decision of the High Court was confirmed by the Privy Council. "The plaintiffs" observed their Lordships, "were assignee's of the *darpatni* taluk, and, though the transfer was not registered, they had the right and were compelled to diposit the amout of rent due to the Zamindar in order to protect their own interests. They made the deposit and the defendants had the benefit of it. The plaintiffs are consequently entitled to recover the amount from the defendants. The law upon the merits of the case is very accurately laid down in the judgement of the High Court.'

So also in *Okhoy Kumar Chatterjee and others V. Mohtab Chand*[6] which was a suit for the abatement of a patni jama on account of the fact that a part of the *patni* had been acquired by Government for irrigation purpose, and where the lower court had held that the fact of the special appellants' names not having been registered in the Zamindari *Sherista* operated as a bar to their maintaining the present suit, it was held that the statutes of a *patnidar* or *darpatnidar* did not depend upon registration or the consent of the Zamindar. "We think," it was said, that the judges' decision is wrong in law. In *Khetra Pal Sing & other V. Lukhi Narain Mitter and another*[7] it was held by this court that all *patnidars* and *darpatnidars* have the right to alienate, or otherwise transfer, their property without the consent of the Zamindar, and that under section 5, Regulation VIII of 1819, it would not be competent to the Zamindar or other superior holder to refuse to register and otherwise transfer, their property without the consent of the Zamindar and that, under section 5, Regulation VIII of 1819, it would not be competent to the Zamindar or other superior holder to refuse to register and otherwise to give effect to such alienations ; and that the status of a *patnidar* or *darpatnidar* does not depend upon registration or the consent of the Zamindar. That decision was upheld by their Lordship of the Privy Council, and the law as laid down in that case, was approved by their Lordship or a decision to be found

in 20 W. R. 380. The unregistered transferee of a transferable tenure could not be treated by the landlord as a tress-passer, and was entitled as against the landlord, who has evicted him, to be restored to *khas* possession (*Nabin Krishna Mookherji V. Shib Prasand Patak*)[8].

Even when an assignment of *darpatni* interest had taken place, the registered tenant remained still liable for the rent, the landlord was only required to see him. In *Jadoonath Pal V. Prosunna Nath Dutta* & others[9], where a suit for rent was brought against the real lessees in possession of a *darpatni*, it was held that a decree for arrear of rent may be given against the real lessess in possession although no previous realisation of rent directly from them is established, and no written agreement is shown to have been executed by them in their own names, another party being the ostensible holder of the *darpatni* and not denying liability. Macpherson, J., observed that, when it was found that defendants were in actual possession of the *darpatni*, 'the relation of landlord and tenant existed between them and the plaintiff and they were liable for the rents, unless there was a special contract that the person whose name used should alone be liable.'

Section 67 of the Bengal Tenancy Act provided that 'an arrear of rent shall bear simple interest at the rate of twelve and a half per centum per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the date of payment or of the institution of the suit.' It was, however, been held that section 67 did not control section 179 of the same Act which provided that 'nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently settled area from granting a permanent mokarrari lease on any terms agreed on on between him and his tenant.' Consequently, a lease of a *darpatni* taluk, created on the 13th February, 1886, i.e. after the Tenancy Act had come into operation, by the terms of which the defendant was found to pay rent in monthly instalments, and if not so paid, to pay interest at the rate of 1 per cent per mensum, is not affected by the provisions of section

67 of the Bengal Tenancy Act read with those of section 178(3)(h) of the same Act, as the *darpatni* was a permanent lease granted by a parmanent tenure-holder in a permanently settled area (*Atulya Chandra Basu V. Tulsi Dass Sarkar*)[10]. In *Basanto Kumar Roy Chowdhuri V. Promotho Nath Bhattachargee*[11], however, it was held that a contract by a tenant holding under a permanent mukorari lease to pay interest on the arrear of rent at a higher rate than 12 per cent per annum was not enforceable in law.

The conflict between these two rulings was referred to a Full Bench by which it was decided that s. 179 did not control s. 67 of the Bengal Tenancy Act and that the case of *Basanto Kumar Roy Chowdhuri V. Promotho Nath Bhattacharjee* was wrongly decided (*Matangini Devi V. Makrura Bibe*)[12], The law, therefore, seemed to be that, even if a darpatni tenureholder agrees to pay interest on arrears of rent at a higher rate than 12 per cent per annum the contract is binding. In *Rajnarain Mitter V. Panna Chand Singh*),[13] which was a suit for arrears of rent against the auction purchaser of a *darpatni* tenure, where one of the questions was whether the auction purchaser was bound by the clause in the *darpatni* lease stipulating for the payment of interest on the arrears of rent at the rate of Rs. 30 per cent per annum, it was held that the auction purchase of a *darpatni* was bound by the stipulation contained in the *darpani* lease as to payment of interest for arrears of rent, such a stipulation, where there is nothing unusual in it, being a part of the ordinary incidents of a tenancy in the country.

Stipulation to pay abwab by the *darpatnidar* was binding. The defendant, a *darpatnidar*, stipulated in *Kabulyat* for annual payment of Rs. 4/- in lieu of certain qualities of jack-fruit, bamboos and fish. The stipulation was contained in a clause perfectly distinct from that containing the payment of rent which was payable quarterly. *Held* (1) that such a stipulation is a stipulation for the payment of an abwab ; and (2) that a stipulation for the payment of an abwab under a permanent mukarari lease is valid (*Krishna Chandra Sen V. Sushila Sundari Dassi*).[14] In *Rajnarain Mitter V. Panna Chand Singh*,[15] where a

suit was brought for arrears of rent against the auction-purchaser *darpatni* tenure, and where one of the questions was, whether the auction-purchaser was bound by the clause in the *darpatni* lease stipulating for the payment of Rs. 10/- annually in the event of default in supplying the landlord with a certain quantity of molasses, but which amount was not included in the rent mentioned in the sale-proclamations published for sale of the *darpatni*, it was *held* that the landlord, the decreeholder, was not entitled to claim an amount not mentioned in the sale-proclamation. *Held* also that it is very doubtful whether a stipulation in the lease to pay a certain sum of money in default of the lessee's supplying the landlord with certain articles should be considered as an ordinary incident of the *darpatni* tenure. It may will be held to have been personal covenantly the lessee by whom the *darpatni* was taken.

What about abatement of rent ? In a suit by a *patnidar* to recover rent in accordance with the terms of a *darpatni* lease, the defendant claimed an abatement of his *patni* rent on the ground that his predecessor in interest had obtained such an abatement in a rent suit brought by the patnidar's mother against him, in which it appeared that the lessee's share was slightly less than what had been described in the lease. *Held* that unless the defendant could show that he had been damaged by plaintiff's misrepresentation as to the extent of his share, he could not be relieved from his contract, at least in this shape (*Gour Mohun Roy V. Radha Raman Singh*[16] ; *Okhoy Kumar Chatterjee V. Mahtab Chand Bahadur*).[17]

An unregistered *patnidar*, who paid some money to save the superior *patni* from sale, was entitled to a refund even though his name was not registered in the office of the superior landlord (*Lakhi Narain Mitter and another V. Khetrapal Singh* and another).[18] In another case defendants, after purchasing a *patni taluk* at an auction sale for arrears of rent under Regulation VIII of 1819, granted a *darpatni* lease to the plaintiffs (the former darpatnidars) and received a bonus of Rs. 1,199/-. The auction sale having been five years afterwards set aside, it was held (in accordance with the principles of equity and good

conscience) that the plaintiffs were entitled to a refund of the bonus, although they had not been dispossessed but had simply reverted to their former position as *darpatnidars* under the former *patnidar* (*Tarachand Biswas and others V. Ramgobinda Chowdhury and others*).[19]

Patnidar who gave *darpatni* could not measure the raiyats holdings, but he was entitled to a general survey. Along with *darpatni* he surrendered such rights which devolved on the *darpatnidars*. A Patnidar made an application under section 10, Act VI of 1862, to have the raiyats' holdings separately measured and their names and the rent payable by them recorded. Between him and the raiyats there were the *darpatnidars* and *shikmee talukdars*. Held that section 10 Act VI of 1802, contemplated the case of a proprietor of an estate who, by reason of his inability to ascertain who were the persons liable to pay rent to him, was unable to measure his estate, but not to that of a *patnidar* like the plaintiff who knew who was liable to pay rent to him as he had given a *darpatni*. He might, however, be entitled to make a general survey of the land comprising the *darpatni* (*Dwarakanath Chnckerbutty V. Bhowani Kishen Chuckerbatty*).[20]

A *darpatnidar* could not be ousted so long and as he paid his *darpatni* rents. In *Jadub Chandra Thakur V. Bhola Nath Singh Roy*).[21] One Gopal, purchased at sheriff's sale a *patni* lot, lot Kistobatee, described as consisting of 20 villages and passed his rights on the Jadub Chander. The latter alleged that this was only descriptive and lot Kistobatee consisted of really 27 villages, and that consequently he was not to lose his rights to the 7 villages owing to misdescription or mistake. On going to take possession, Jadub Chander was ousted by a variety of claimants alleging rights in the 7 villages. He brought suits against them (making the *patniáars* also parties) and got decrees. In execution of those decrees, however, one Bholanath alleging *darpatni* rights by mortgage in the 7 villages, intervened under 269 of Act VIII of 1859 and his claim was admitted. Jadab Chander contended that, in face of the decrees in his favour, Bholanath had no locus standi in court. *Held*

that Bhola Nath had every right to come forward in execution with his *darpatni* claims, when by Jadub Chander's prayer for *khas* possession, Bhola Nath's *darpatni* rights were invaded. *Held* also that no *darpatni* rights passed away by the sheriff's deed of sale, and that the purchase then made of the *patni* rights and interests did in no way give Jadub Chandra any right to oust the darpatnidar. "It may be quite possible", said the Judges, "that the judgement-debtor, in execution, at the sheriff's sale, reserved to himself 7 of 27 villages and thus created the darpatni of them which he mortgaged to Bhola Nath ; and it may also be true that the whole revenue and rent charges for letting Kistobatee have been paid by the petitioner. Neither of these facts will entitle him to oust the *darpatnidar* under his present proceedings, so long as the *darpatnidar* pays his *darpatni* rent and is not ousted by regular course of law."

In *Mathoora Mohan V. Ramlal*,[22] a *sepatni* was granted to B by A who held a *darpatni* containing the following conditions, viz., "I shall pay rent month by month ; should I fail in that I shall pay interest on instalments overdue at 1 per cent per month. I shall pay the rent in full by the close of every year, should I neglect to make the payments, you will, of your own authority, take over possession of the said *darpatni taluk* after the expiration of one month of the next succeeding year, and I shall have no complaint against your doing so." Upon non-payment of the rent for 1281, a suit for *khas* possession of the land was brought against A and B. The defendants claimed an equitable right to prevent forfeiture by paying all arrears according to the terms of the *darpatni* together with all costs. The Court (Pontifex and McDonell, J. J.), observed : 'We do not think it necessary to decide in this case whether or not the provisions of the Rent Laws actually apply ; because we think that, even if they do not in terms apply, we are bound by analogy to that law to apply in favour of the defendants an equity simliar to the equity there given. We, therefore, think that if the defendants pay the whole of the rent due to the present time with interest according to the stipulations of the original *kabulyat* and patta, and also pay all the costs of the proceedings

in both this court and the courts below, the plaintiff ought not to have *khas* possession decreed to him'. A *darpatni* lease granted upon the payment of a bonus contained a condition that, if the annual rent remained for a longer period than one month in arrear, the lessor should have a right of re-entry. The lessor upon defult in payment of rent, without availing of the forfeiture, instituted a summary suit for the arrears of rent, and, upon an award thereon, the lands were sold for such arrears. It was held that the purchaser who bought the *patni* tenure without notice of the condition for forfeiture, was not subject to that condition (*Deen Doyal V. Jageshwar*).[23]

A holder under *darpatnidar* of a portion of a *patni taluk* had a right to sue for possession (*Tarasundari V. Shama Sundari*).[24] Where a *patnidar*, while out of possession of the *patni* estate, granted a *darpatni* thereof, it was *held* that the *darpatnidar's* suit against third persons, who were in possession of the estate, to recover possession would lie, it appearing that the plaintiff had paid an adequate consideration for the *darpatni* (*Lokenath V. Jagabandhu*).[25]

One of the most critical issues in the relationship between the Zamindar and the Patnidar was the right of the Patnidar to sublet and/or sale. Patnidar's freedom of subinfeudation was well-maintained, objections by the Zamindars were completely overruled. He would, however, have some share from the sale proceeds or from consideration money receivable by the Patnidar during transfer. The sec. 5 was very clear of this issue where it was maintained that the Zamindar was not entitled to refuse to give effect to a transfer, but may demand fee at two per cent on the *jama*, the maximum being one hundred rupees. He may also demand security, as far as half the *jama*. These rules were to apply to sales in execution and all other alienations. No fee, however, could be charged on sale for arrears.

The relevant section ran as follows :

'5. The right of alienation having been declared to vest in the holder of a *patni taluk*, it should not be competent to the Zamindar or other superior to refuse to register and otherwise to give effect to such alienations by discharging the party transfering this interest from personal responsibility and by accepting the engagements of the transferee. In conformity, however, with the established usage, the Zamindar or other superior shall be entitled to exact a fee upon every such alienation, and the rate of the said fee is hereby fixed at two per cent. On the *jama* or annual rent of the interest transferred, until the same shall amount to one hundred rupees, which sum shall be the maximum of any fee to be exacted on this account. The Zamindar shall also be entitled to demand substantial security from the transferee or the purchaser to the amount of half the jama or yearly rent payable to him from the tenure transferred, the condition of furnishing such security or requisition being understood to be one of the original liabilities of the tenure. The above rules shall apply equally to the case of a sale made in execution of a decree or judgment of Court, as to all other alienations ; but it shall not apply to the case of a sale for an arrear in the rent due to the Zamindar or other superior under the rules hereinafter contained. The purchaser at such a sale shall be entitled to have his name registered and to obtain possession without fee, though of course liable to be called on to give security under the conditions of the tenure purchased.'

Section 6 pointed out that the Zamindar might refuse sanction to transfer till fee and security were tendered. It also pointed out 'that the rules of this and of the preceeding section shall not be held to apply to transfers of any fractional portion of a *patni taluk*, nor to any alienation other than of the entire interest ; for no apportionment of the Zamindar's reserved rent can be allowed to stand good unless made under his special sanction.'

Although, however, the transferee of a fractional share of a *patni* could not enforce registration of his name on payment of the necessary fee and tender of the requisite security, yet it did not follow that such a transfer was altogether void, or that the transferee of such a share was not liable for rent jointly with the registered tenant if the landlord chose to recognise him as one of the joint holders of the *patni* (*Sourindra Mohan Tagore V. Sarnomoyee*).[26] The true meaning and intention of the latter

portion of sec. 6 was, observed the judges in this case, not to make the alienation of a fractional portion of a *patni taluk* without the sanction of the Zamindar absolutely *void*, nor even to exempt the transferee from liability for rent jointly with the transferor if the landlord choses to recognise him as one of the joint holders of the patni, but only to prevent any splitting of the tenure and apportionment of the rent without the sanction of the landlord, as the concluding words of the section, which contain the reason for the provision, clearly show.' By suing the unregistered transferee of a part of the *patni* jointly with the transferor, the Zamindar only recognised him as one of the joint holders of the *patni*, but because he did so, he could not be said to have waived the right secured to him by section 6 of the Regulation VIII of 1819 to preserve the unity of the tenure held under him without spilitting and apportioning his rent.[27] Again, where on a former occasion the purchaser of a tenure applied for leave to deposit the judgement-debt under section 170, sub-section (3) of the Bengal Tenancy Act and his application was opposed by the decree-holder, but the court decided that the petitioner was interested in the tenure and the landlord withdrew the deposit made by the petitioner in pursuance of the order of the court, it was *held* that the effect of the decision was that, as between the landlord and the transferee of a share of the tenure, it was conclusively settled that the transferee had acquired an interest in the tenure by the purchase, and that, as the landlord had withdrawn the sum deposited, it was no longer upon to him to dispute the title of the depositor (*Jugal Moni Dassi V. Sreenath Chatterjee*).[28]

A purchaser of a *patni taluk* under the rules laid down in the Regulations or at a sale under a decree for arrears of rent held by a Civil Court was entitled to have his name registered in the proprietor's office and to obtain possession without the payment of any fee. But he was liable to be called upon to give security under the conditions of the tenure purchased. A Zamindar of Superior landlord, was, however, entitled to demand from a purchaser at a sale under an ordinary Civil Court decree the same fee and security as from a voluntary aliance. In *Sourindro*

Nath Pal Chowdhury V. Tincowri Dassi),[29] the plaintiff brought a suit to recover arrears of rent from *Asar* 1293 to *Magh* 1296 in respect of a *patni-taluk*. The defendants admitted having held the *taluk* up to the end of *Ageran* 1294, but contained that, as the *patni taluk* had then been sold in execution of a decree and purchased by one S, they were not liable for rent which accrued after that date. The auction purchaser (S) had obtained possession of the *taluk*, but did not get himself registered in the Zamindar's *sherista*, as he disputed the amount of fee payable by him. *Held* that the rights of the Zamindar were not affected by the existence of the remedy provided by Section 7 of Regulation VIII of 1819. The law on the point, observed the judges, was laid down in *Lakhi Narain Mitter V. Khatter Pal Sing*), where the judges said : 'The Zamindar or other superior landlord in certain cases is empowered to attach the property, if the subordinate holder neglects to register his name and to hold it in trust for the subordinate holder, and in all cases until the transfer is registered, the old tenant and the tenure itself are liable for the rent.'

It should be observed that Section 13 of Bengal Tenancy Act, which provided for the payment of landlord's fee and a further fee for service of notice of the sale on the landlord in cases of sales of permanent tenures in execution of decrees other than decrees for arrears of rent due in respect thereof, did not apply to *patni* tenures, these tenures being specially saved from its operation by S. 195, clause (e) of that Act. In *Gyanada Kr. Roy Bahadur and others V. Bromomoyee Dassi*),[30] where the interests of the defendants in the *patni* where sold in execution of a decree and were purchased by one *Bromoyee Chowdhurani*, who, by virtue of her purchase, obtained possession of the *patni* and deposited in Court what was called the landlord's fee and the further fee for service of notice of the sale on the landlord as required by S. 13 of Bengal Tenancy Act, and where the plaintiff refused to recognise the sale and brought a suit against the defendants, who were the heirs of the registered tenant, for arrears of rent, it was *held* that, having regard of sections 5 and 6 of the Regulation, the purchaser ought to

B.U./Zamindars/64-14

have applied to the Zamindar to register the transfer of the tenure and at the same time to have paid or tendered the prescribed fee as required by those sections, and that, as the purchaser had not done so, the plaintiff had a right to refuse to recognise the sale and to look to the ostensible tenants (i.e. the defendants) for rent. It was also held that, under the circumstances mentioned, there were two courses open to the Zamindar (plaintiff), *viz.* either she could refuse to recognise the transfer and the purchaser as her tenant until the rules laid down in S. 5 has been complied with, or, she could take proceedings under S. 7.

The provisions of S. 13 of Bengal Tenancy, however, apply to the sales of *darpatni taluks* in execution of decrees, as the provisions of S. 195 Cl.(e) of that Act apply only to enactments relating to *patnis*, properly and strictly so called, and must be treated as excluding those which relate to tenures, which though resembling *patnis*, as *darpatnis*, etc. are not strictly *patnis*, not possessing all the qualities of them (*Mahammad Abbas Mandal V. Broja Sundari Debya*).[31].

In one case, it was decided that, on the death of a registered *patnidar*, a Zamindar is not bound to recognise any one as his tenant without registration in his sherista ; not was he prevented from putting in a *sezawal* to call the rents until a declaration of the rights of the deceased *patinidar's* heirs (*Ram Charan Bandopadhya V. Bromomoyee Dassee*)[32]. It should be noticed, however, that Regulation VIII of 1819 provided no procedure for the registration of changes in the holders of *patni* tenures which were affected by death and operation of law. The provisions of sections 5 and 6 clearly applied to voluntary alienations and not to successions and transfers by operation of law.

In such cases, therefore, no registration in the Zamindar's Sherista was necessary, but it had been held that sections 15 and 16 of Bengal Tenancy Act were applicable to *patni* tenures, and not-withstanding the provisions of Section 195(e) (*Durga-Prasan Bandopadhya V. Brindaban Rai*).[33] Consequently, a person succeeding to a *patni* tenure must have given notice of the succession and paid the requisite landlord's fee to the Zamindar through the Collector, and until he did so, he would

not be entitled to recover rent from his tenants by suit, distraint or other proceeding. So, where A acquired a *patni* in the name, and for the benefit, of an ideal of which he was the *shebait* and where upon his death he was succeeded as *shebait* by B who did not give notice to the collector or pay the fee under Section 15 of Bengal Tenancy Act, it was *held* that a suit for rent brought by B against a tenant was barred by S 16 of the Act (*Mabatulla Nasyar V. Nalini Sundari Gupta*).[34] It was the duty of persons succeeding by inheritance to a permanent tenure to notify the succession, and it was not the duty of the superior landlord to find out who are the heirs of the deceased tenure-holder were. Accordingly, when a person was admittedly one of the heirs and, as such, in possession and liable for the rent, he could not defeat a landlord's suit for rent by showing that there were other heirs equally liable, unless possibly he went further and showed that their names had been notified to the landlord as successor of the original holders or that they had been paying the rent and getting receipts as successors (*Khettro Mohon Pal V. Pran Krishna Kabiraj*).[35] In a suit brought by *patnidars* on the death of the owner for arrears of rent which secured before his death, the defence of the *darpatnidar* was that, as the plaintiffs had been complied with the terms of Section 15 of the Bengal Tenancy Act, the suit was not maintainable, and it was *held* that, as the plaintiff did not claim the rent as the holders of the tenures, but as the representatives of the holder of their father, the rent became an increment to the estate of the father and that, therefore, the suit was maintainable (*Sheriff V. Gogamyava Dassi*).[36]

According to Section 6 a mere application for registration was not sufficient ; that section specifically provided what was legally to be done if the request was refused (*Kisto Jiban V. A. B. Mohitosh*)[37]. On an appeal from the order of a Commissioner relating to the registry of a *darpatni* tenure, the Board *held* that, while each underholder had a right to demand registration in the office of his superior, that superior had *per centra* the right to demand the prescribed fee and substantial security.[38] There was, however, no appeal against an order

passed by the Civil Court under this section. It was also held in the pertition of *Surja Kanta Acharya Chowdhury*[39]. A was the owner and Zamindar of an estate called Shershabad. B having acquired by purchase a *patni* tenure within this estate, applied to Civil Court of the district where the property was situated under Section 6 of Reg. VIII of 1819, and the District Judge issued an order directing A to give effect to the transfer without delay in accordance with law. A appealed. *Held* that there was no appeal from an order made by the Civil Court under Section 6 of Reg. VIII of 1819.

A *Se-patnidar* was not entitled to sue a *darpatnidar* to compel him to register his name in his *sherista* as the transferee of a *se-patni* tenure, but it was open to him to sue for a declaration of his right as the tenant of the *darpatnidar* (*Mollall Singh V. Sheik Omar Ali*).[40]

A Zamindar could not bring a suit in the Civil Court to compel the purchaser of a patni in his estate, sold by auction for arrears of rent, to furnish security for the amount of half of the yearly *jama*. If the purchaser of the *patni* was not willing to give security for the payment of his rent, the Zamindar's remedy was under Sections 5 and 7 of Regulation VIII to appoint his own *sezawal* for collection and deduct his own rent from the collections, before handing over the surplus to the *patnidar* who moreover was declared by Section 7 to take all the risks of attachment. The remedy of the Zamindar was not affected by the grant of a *darpatni* to a third party (*Joy Kishen V. Janki Nath*)[41], where, however, no security was demanded by the landlord under section 6 of Regulation VIII of 1819 and no default was made by the purchaser; but, on the contrary, where the purchaser made repeated tenders of the rent, instalment by instalment, and endeavoured to secure recognition, the refusal of the landlord to recognise the transferance was entirely indefensible (*Govinda Sundari Sinha Chowdhury V. Srikrishna Chakravarty*).[42]

The registration of name in the Zamindar's *Sherista* was of great importance both to the outgoing *patnidar* and to the purchaser or transferee. It relieved the former of all personal

responsibility as to the payment of rent subsequent to the cessation of his possession. On the other hand, it enabled the latter to deal directly with the landlord and afforded him a better opportunity of protecting his tenure. Unless a purchaser's name was registered in the landlord's office, the landlord might bring suits against the registered *patnidar* for recovery of arrears of rent or might institue proceedings under the Regulation. The primary object of registration was to give the superior holder information as to who was his tenant, and until the formalities prescribed by the Regulation were conformed to, the superior holder was justified in looking to the registered tenant for his rent. Recorded tenant was liable for rent where there was no registration (*Lakhi Narain Mitter V. Khettra Pal Sing and another*).[43]

This case went on appeal to the Privy Council and while confirming the judgement of the High Court, their Lordships observed :—Until the assignment had been registered, or the assignor had been accepted by the *patnidar* or his tenant, the assignor was not discharged from liability, and such liability may be enforced by the sale of the *darpatni taluk* in execution of a decree against him for the rent. (*Lakhi Narain Mitter V. Khettra Pal Sing.*)[44] In a suit for arrears of *patni* rent, a Zamindar, while applying to the collector to bring the property to sale, need not have recognised any one but the registered patnidar (*Raghab V. Brojo Nath*).[45]

Where the purchaser or transferee had failed to register his name, the effect of a sale in suit or proceedings against the registered tenant was the same as if the purchaser himself had been sued unless it could be proved that fraud had vitiated the sale. A person who acquired a *patni* tenure of a sale in execution of a decree for money against the *patnidar*, but who did not get his name registered in the landlord's office was bound by a subsequent decree for arrears of rent against the registered tenant and by the sale in execution of such a decree, and was therefore, a representative of the judgement-debtor within the meaning of S. 244 of the Civil Procedure Code (*Surendro V. Gopi Sundari*).[46] It is also been seen in

Ishanchandra Sirkar V. Beni Madhab Sircar)[47] and *Asgar Ali V. Asabhuddin Kazi.*[48] The non-registration of name in the Zamindar's *Sherista* would not, however, make the transferee a trespasser. The unregistered transferee of a transferable tenure could not be treated by the landlord as a trespasser, and was entitled as against the landlord, who had evicted him, to be restored to *khas* possession (*Nabin Krishna Mookherjee V. Siba Prasad Pathak*)[49]

In *Lakhi Narain Mitter V. Khettra Pal Sing and others*),[50] it was *held* that, in view of Section 5 of the Regulation which said that it should not be competent to the Zamindar or other superior landlord to refuse to register and otherwise to give effect to alienations which all *patnidars* and *darpatnidars* have a right to make without the consent of the Zamindar, the status of a *patnidar* or a *darpatnidar* does not depend upon registration or the consent of the Zamindar. The same view was held in the case of *Okhoy Kumar Chatterjee V. Mahatab Chand Bahadur*).[51] In one case it was held that the plaintiff having omitted to have his name registered was not in a position to sue to set aside the sale (*Gossain Mongal Dass V, Babu Roy Dhunput Shingh*).[52]

But this decision had practically been over-rulled by *Chundy Prasad V. Shubhadra*[53] and by *Joy Kissen V. Sarafunnessa*,[54] where it had been held that an unregisterd proprietor of a *patni* tenure might institute such a suit. In the last mentioned case the exact effect of Sections 5 and 6 of the Regulation was considered. "The effect of the provisions of those Sections," observed Petheram. C.J., amounts to this, that upon an alienation or transfer by the *patnidar*, the Zamindar may exact a fee which represents his profit, being the portion of his interest in the property whenever a transfer of the tenure is made, the amount of which is regulated by the Regulation itself, and further than that until the fee has been paid, the Zamindar shall not be bound to register the transfer, and further then that, until the transfer has been registered, he shall not be bound to recognise the transfer in any way, that is to say, until his demand has been satisfied and registration

has been effected, the old tenant remains his tenant, and the relation of landlord and tenant has not been created between him and the assignee of the *patnidar*, whatever arrangement may be between the *patnidar* and his assignee. This is the effect, so far as I can see, of these sections, that until the terms of the Regulation have been complied with, and until the fee has been paid, and the registration effected, the relation of landlord and tenant continues to exist between the landlord and the old tenant, and no privity of contract and no relation of landlord and tenant exists between the landlord and the assignee. But this is all, the Regulation does not say, and it would be very inequitable that it should say that no interest whatever could be created in the tenure by the assignor, or that no person could obtain any interest whatever in the tenure, without the registration of the transfer. Any interest which could be created consistently with the remaining in existence of the original tenure can be created without the Regulation, and so far as I can see, is not prevented by the Regulation in any way. This view wass followed in the case of *Harak Chand Babu V. Charu Chandra Singh*,[55] where it was *held* that the absence of registration of the patnidar's name in the Zamindar's *Sherista* can not bar the *patnidar* from bringing a suit to recover possession of *Chaukidari Chakaran* land, if on the evidence it is proved that he has established his title as *patnidar*. So also an unregistered tenant could bring a suit for recovery of surplus sale-proceeds (*Matangini V. Sreenath*).[56]

Applications for registration of name could be made, or suits for compelling the landlord to register might be instituted, at any time after the purchase ; there was no bar of limitation ; the cause of action being a recurring one. (*Govind V. Rungo*)[57] *Ishan V. Chandra*).[58]

The Zamindar might attach the tenure if security was not tendered within a month of public sale. The Section 7 of the Regulation stated that, "In case of the sale of a *patni* tenure in execution of a judgement of Court, if the purchaser do not, within the period of one month from the sale, conform to

the rules of Section 5 of this Regulation, in order to obtain the transfer of his tenure by the superior to whom the rent fixed upon it is payable, the Zamindar or other superior shall be entitled, of his own authority, to send a *sezawal* to attach and held possession of the tenure until the forms prescribed be observed".

In case also of the sale of a patni tenure for arrears of the rent due upon it, under the rules of this Regulation if security be required by the Zamindar and the purchaser fail to furnish the same within one month of the date of sale, the Zamindar shall similarly be entitled to send a *Sezawal* to attach and held possession of the interest which may have passed on the sale, to the exclusion of the purchaser, until the prescribed security be given.

Attachment made under this section shall be regarded as trusts for the benefit and at the risk of the purchasers : Consequently, after deducting the rent due and the expense of attaching, any surplus that may be yielded by the collections shall be held in deposit for such purchaser : but if the collections for the time fall short of the rent, the tenure and person of the properietor shall be liable in the same manner as if no attachment had been made, and the accounts produced by the Zamindar or other superior making the attachment shall be received as *primafacie* evidence of warrant process for an arrear so accruing." It can be noted that the above section applied only to the sale of a *patni* tenure in execution of a judgement of Court or under the rules of the Regulation, but not to voluntary alienations.

If the purchaser of a *patni* was not willing to give security for the payment of his rent, the Zamindar's remedy was under Regulation VIII of 1819, Sections 5 and 7, to appoint his own *Sezawal* or collector, deduct his own rent from the collections before handing over the surplus to the *patnidar*, who, moreover is declared by S. 7 to take all the risks of the attachment. This remedy of the Zamindar was not affected by the grant by the purchaser of a *darpatni* of the interest he had purchased to a third party. "*A darpatnidar*", observed Glover, J.,

"appointed under the terms of Regulation VIII is in the same position as the original *patnidar*, has all his rights, and at the same time, all his liabilities to the Zamindar...The grant of a *darpatni* to a third party would not annul the law, or prevent the appointment by the Zamindar of a *Sezawal*, should no arrangements be made for giving security for rent. If this were so, the Regulation would be a dead letter" (*Joy Kishen Mukherjee V. Janoki Nath Mukherjee*).[59] If, by reason of the *patnidar* not giving security, the Zamindar withheld his *amal dastak* and also abstained from availing himself to the power which the law gave him of collecting the rents himself, it would be inequitable to allow him to recover from the *patnidar* the rent which the withholding of the *amal dastak* had prevented his collecting. Thus if the Zamindar did not act under S. 7 or granted *amal dastak*, patnidar was not liable for rent (*Bidhu Mukhi Debee V. Nilmoni Sing Deo*).[60]

What remedies were open to a Zamindar if a purchaser did not register ? In the case of *Lakhi Narain Miiter V. Khetra Pal Sing*[61] it was observed that, under the Regulation, the Zamindar or other superior holder was in certain cases empowered to attach the property, if the subordinate holder neglected to register his name, and to hold it in trust for the subordinate holder : and that in all cases, until the transfer was registered, the old tenant and the tenure itself were liable for the rent due. So also in *Gyanada Kanta Roy Bahadur V. Bromomoyi Dassi*,[62] it was held that, where a *patni* was sold in execution of a decree and the purchaser did not apply to the Zamindar to register the transfer, and at the same time, paid or tendered the prescribed fee as required by Section 5, to the Zamindar, two sources were open to him, viz., either to refuse to recognise the transfer and the purchaser as his tenant, until the rules laid down in Section 5 has been complied with, or she could take proceedings under Section 7. In *Sourendro Nath V. Tincowrie*[63] a *patni taluk* was sold in execution of a decree, but the auction-purchaser, although he obtained possession, did not get himself registered in the Zamindar's *sherista*. In a suit by the Zamindar against the

former holder of *patni* for rent due for a period previous to the sale, it was *held* that the suit lay against him, and that the rights of the Zamindar were not affected by the existence of the remedy provided by Section 7 of Regulation VIII of 1819. Referring to this state of the law, their Lordships observed in this case :—"Where this is a *causes omissus* in the law or where the former tenant, compelled in this suit to pay the rent of a property of which he is not in possession, has any remedy against the unregistered purchaser in possession, provided it be established that the purchaser has refused unreasonably and improperly to get himself registered in the Zamindar's book and thereby to relieve the former tenant from liabilities, is a matter which is not before us and which we have no right to determine. What we have before us is simply this question : Does or does not this suit lie against the old tenant and we think we were about to hold that the rights of the Zamindar, as stated in the judgement of this Court of which we have referred (*Lakhi Narain Mitter V. Khetra Pal Sing*), are not affected by the existence of the remedy provided by Section 7, and that there is no defence to the suit. A person who had purchased a *patni* holding at a sale in execution of a money-decree, but had not registered his name in the landlord's *sherista* was bound by a subsequent decree for arrears of rent obtained by the landlord against the registered *patnidar* and by the sale in execution of such a decree, and was therefore, a representative of the judgement-debtor within the meaning of Section 244 of the Civil Procedure Code (*Surendra V. Gopi Sundari*).[64]

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CHAPTER IV

RENT PAYMENTS

"Rent" has been defined in Section 3 subsection 5, of the Bengal Tenancy Act (VIII of 1885), 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.'

Patni rent was always based on written contract. A Zamindar and his *patnidar* being bound together by the terms of a written contract, the *patni pattah*, the former could realise rent only on the basis of that contract. In *Messrs. R. Watson & Co V. Tarini Charan Ganguli*,[1] where the plaintiff and the defendants were bound together by the terms of a written contract, and the defendants contended that, the plaintiff could only sue for rent on the terms of that contract, and that, as he had not in this case sued to recover the patni rent on the basis of his *Kabulyat* but had sued for rent due for the use and occupation of the land, that suit be dismissed. It was *held* that this contention was correct. "The plaintiff", observed Justice Glover, "does not, I consider, sue for his *patni rent*, but for rent due for the use and occupation of the land, and the question is, can he bring such a suit ? It is quite clear that upto the present moment there is a contract written between the parties to this suit on the subject of rent for the land held by the defendants, that is to say, the defendants hold a *pattah* and the plaintiffs hold a *Kabulyat* ; and therefore the plaintiff can only bring a suit to recover rent on the basis of that Kabulyat.' So also in *Dhunendro Chundra Mukherjee V. Mr. John Watson Laidlay and others*,[2] it was *held* that a plaintiff was entitled to maintain a suit for rent where he based his cause of action on the *patni pattah* held and admitted by the defendants.

Rent was obviously payable to the landlord. Rent presupposes the relation of landlord and tenant. It must be paid

by the tenant to his landlord. The question sometimes arose as to whether the assignment of a portion of the rent to a third party was "rent". In *Jotindra Mohan Tagore V. Mosst, Kishen Moni Debee,*[3] the payment of the revenue in the collectorate by a patnidar in order to save the estate for sale, when the Zamindar's payment (the Zamindar has paid his own Government revenue also) was credited by the Collector not as revenue, but as a deposit and receipt was granted to the Zamindar accordingly, was *held* to be a sufficient payment of the patni rent to the Zamindar. Jackson, J, remarked in this case :—'The Judge finds that the Collector made a mistake, and that the Collector should have credited the plaintiff's payment to the government revenue, whereas he credited it to a deposit account. In this stage of facts the plaintiff was himself in fault, because he should have seen that he obtained a proper receipt showing that his money was received as payment for revenue, whereas he took a receipt showing that the money received as a deposit, not as a paymnet. The plaintiff now says he ought not to suffer for the collector's alleged mistake. This may be so, but it does not follow that the defendant should suffer.'

In *Radhamoni Chowdhurani V. Mr. James Gray a* patnidar's rent was payable in monthly instalments, he agreeing to pay the government revenue out of the rent. It was arranged that, on presenting the Collector's receipt such receipts should be considered as payments to the defendants. At the close of the year, the patni rent being in arrears, the defendant proceeded to bring the tenure to sale for arrear of rent under Regulation VIII of 1819. The plaintiff claimed to deduct the amount of the public revenue for the month of *Cheyt* which he had not paid, and which, under his *Kabulyat*, he was not bound to pay till the 13th of June, i.e. 15 days before the last day allowed by the government for that purpose. The defendant not having allowed the plaintiff to make the deduction, the plaintiff paid the whole amount to save his tenure from sale, and sued to recover back the amount so paid by him. *Held* that he was not entitled to deduct from an instal-

ment of rent any portion of Government revenue which might not be payable until after the instalment was due, and that he was bound to pay either wholly in cash or partly in revenue receipts but, if he did not pay in one shape or the other, the instalment was due and there was an arrear of rent for which the defendant was entitled to sue.

In *Mahabat Ali V. Mahamed Faizullah,*[5] again, where it was stipulated in a patni lease that the patnidar was to pay a certain some of money as rent, but that, out of this, he was to pay, on behalf of the Zamindar, two sums of money, one sum as cesses upon the property to the Collector and another sum as expenses for the maintenance of a *musjid* on the property of the patni, it has *held* that the two items of money were lawfully payable on account of the use and occupation of the land were, therefore, rent.

In *Ratneshwar Biswas V. Harish Chandra Basu,*[6] however it was decided that a sum of money payable by a tenant not to his immediate landlord but to a third person was not rent. In this case Ryasona Dasi gave an *ijara* to one Govindo Chandra Sirkar, and one of the conditions was that Govinda Chunder should pay a specified portion of the rent to the Zamindar who was Ryasona's landlord. Govindo Chaundra gave a *dari-jara* to Harish Chandra Bose subject to the conditions under which he himself held and then resigned the *ijara*. Ryasona confirmed the *dari-jara* to Hurish Chunder, who there upon became her tenant, and she afterwards transferred her entire right in the land, as well as the right to receive the *dari-jara* rent to Ratneshwar Biswas, who sued him for rent which had become due after the transfer and included in his claim that portion of the rent which Hurish Chunder ought to have paid to the Zamindar. *Held* that Ratneshwar was entitled to recover the latter sum not as rent but as damages for breach of the contract.

The conflict of decision between these cases was ultimately resolved by a Full Bench in *Basanta Kumari Debya V. Ashutosh Chukravarti,*[7] where it was decided that a suit by a landlord against a tenant for a certain some of money payable by him

out of the rent to a third person under assignment is one for rent, and not for damages. The facts in this case were similar to those in the case of *Rutneshwar Biswas V. Hurish Chandra Bose*,[8] and Mr. Justice Prinsep distinguished the case from the present one as follows : 'In the case of *Ratneshwar Biswas V. Hurish Chandra*, the plaintiff and defendant were not landlord and tenant. The defendant was the tenant of the plaintiff's tenant, and in agreement with his landlord, he accepted the condition under which his landlord undertook to make payments of the rent to third parties, and this was accepted by the superior landlord, the assignee. The present case in between landlord and tenant, and the matter in dispute is the *non-payment* of the rent due by the latter to a third party. This was money due to the plaintiff as rent. In *Ratneswar Biswas V. Hurish Chandra Bose*, the money was payable by the defendant's landlord, and was payable under an assignment to a third party, who accepted the payment and sued on it. Here in my opinion lies the difference between the two cases." The other Judge, however could not distinguish between the two cases on the ground stated by Justice Prinsep and observed that they "saw nothing in the report of the case (i.e. *Ratneswar Biswas V. Hurish Chandra Bose*) to indicate that the assignment of the rent under the arrangement between the landlord and the tenant had been accepted by the assigneee who was a third party, the Zamindar, and more than it was accepted in the present case." In their opinion the fact that the assignee was not a party to the assignment and had not accepted it showed that, in the contemplation of the parties, the money did not cease to be a part of the rent or recoverable as such.

So also in *Jnanada Sundari Chowdhurani V. Atul Chandra Chakrabarti*[9], where a lease provided that a certain sum was payable by the tenant direct to the landlord as *malkhana*, and certain other sums were payble by the tenant for Government revenue and other demands, which the landlord was bound himself to pay. It was *held* that the latter sums, though not actually payable to the landlord, were payable for the use and occupation of the land held by the tenant and might have

made payable to the landlord direct, although for convenience it was arranged that the tenant should pay them for the landlord, and as such, they came within the definition of rent in S 3 of Bengal Tenancy Act. In later cases, however, such payments have been held not to be "rent".

The grounds on which these cases have been distinguished are not quite intelligible, but a good deal depends upon the construction of the *patni Kabulyat* in each case. In *Hemendra Nath Mukherjee V. Kumar Nath Roy*,[10] A took lease of certain mouzas from B in *darpatni* and *se-patni* and covenated to pay annually Rs. 3,191 to the superior landlords of B direct and Rs. 1,800 to B. A was to take receipts from the superior landlord, make them over to B and take receipts from the latter. The whole amount of Rs. 4,991 was described in the lease as annual rent fixed and in certain eventualities arising out of non-payment by A to the superior landlords, B was authorised to realise the amount from A by bringing a suit for arrears of rent. *Held*, upon a construction of the lease, that a suit brought by B for realisation from A of the amount which the latter had failed to pay to the superior landlords under the terms of the lease, was, for the purpose of limitation, one not for rent, but for damages for breech of covenant. "It seems," observed M.A. Maclean, C.J. in this case, "reasonably clear upon the language of the *Kabulyat*, that all the defendant covenanted to pay to the Rs. 1,800/- a year, and that, for reasons which, perhaps, are fairly obvious, they declared to treat the land due to the superior landlords as rent due for them to the plaintiffs, but entered into a separate and distinct covenant as regards that rent, viz. to pay to the superior landlords direct. There is no covenant by the defendants to pay the total amount of Rs. 4,991/- odd as rent the plaintiff. There are two seperate and distinct covenants, one to pay Rs. 3,191/- odd to the superior landlords, and the other to pay Rs. 1,800/- as rent to the plaintiffs as landlords and the contract was doubtless taken in this form for the benefit of the tenant : Great stress has been laid upon the words 'in all fixing the

annual rent in your 16-annas share aforesaid at Rs. 4,991/- odd,' etc. This, I think, only means that the total sum to be paid for the use and occupation of the land was to be Rs. 4,991/- odd ; but this is subject to the later provision in the deed how the sum is to be dealt with...upon the best construction that I can put upon the deed, I do not think that the sum of Rs. 3,191/- odd was rent payable by the defendants to the plaintiffs and I think that the plaintiffs' proper remedy was, as has been done, to bring a suit for damages for the breach of the defendants' covenant." In this case it was observed that the case of *Ratneswar Biswas V. Harish Chandra Bose*,[11] though referred to in the Full Bench case *Basanta Kumar Debya V. Asutosh Chakravorti*[12],had not been overrruled by that case.

In *Jotindra M. Tagore V. Jurao Kumari*,[13] the respondent held certain property under the appelant on *patni-tenure* on terms which were embodied in two Kabulyats executed by the respondent in 1885 and 1893 respectively. In the first Kabulyat it was stated that, 'the annual *jumma* of this patni mahal is fixed at Rs. 6000/-.....Besides the said *patni* rent I take upon myself the duty of depositing in the collectorate the Government revenue of Rs. 40,156/- fixed for the 8-anna share of the said mahals." The second Kabulyat was to the effect that "having agreed to pay an an additional rent of Rs. 1000/- in respect of the *patni* which I took.....on the condition of paying you a *patni* jumma of Rs. 6,000/- per year and of Rs. 40,156/- into the collectorate year by year, kist by kist, as government revenue for the said 8-annas share, I hereby promise that from the present year I shall pay the Rs. 1,000/- in excess as jumma for my said *patni taluk*.' Provision was also made in the *Kabulyat* for payment by the respondent of certain cesses. On default in the payment Rs. 7,000/- rent and cesses, the amount with costs was to be recovered as arrears of rent under Regulation VIII of 1819 ; but for default in the payment of the Government Revenue the penalty was declared to be forfeiture of the tenure. *Held* by their Lordships of the Privy Council (affiirming the decision of the High Court) that according to the true

construction of the *Kabulyats* read with Regulation VIII 1819, the Government revenue was not "money payable to the landlord" and, therefore, was not "rent" within the meaning of Sec. 3 Clause (5) of the Bengal Tenancy Act ; and consequently it could not be recovered by summary sale under the provisions of Regulation VIII of 1819.

"The payment" it was observed by their Lordships, 'by the patnidar of the government revenue is no doubt a part of the consideration to be rendered by her for the enjoyment of the tenure, but is not money payable to the landlord. Nor it is provided in that document that it is to be dealt with in the same manner as rent, as it provided in the cases of cesses. And what is most significant of all, a special mode of enforcing the obligation to pay Government revenue is provided, viz., the cancellation of the tenure in case of default ; and this is the precise sanction which the law has forbidden by the terms of the Regulation in the case of rent.'

Macclean, C. J., distinguished this case from the Full Bench case of *Basanta Kumari Debi V. Ashutosh Chakraborti*[14] and observed "We were told we are bound by the Full Bench case. That case affords us very little assistance in construing the document now before the Court. There the *whole sum* was rent, and, as Mr. Justice Macpherson put it, 'the money was undoubtedly a part of the entire sum which the defendant undertook to pay to the plaintiff, his landlord, as rent for the use of the land.' Here we have to ascertain whether the Rs. 40,156/- is or is not rent, which question must be answered in the negative." Where a former proprietor allowed the patnidar to pay his patni rent direct to the collector, it was *held* that the present proprietor is not bound by that arrangement (*Modon Mohon Saha V. Sooko Moyee Chowdhurani*).[15]

It was contrary to the usage of the country for a *patnidar* to pay his rents by monthly *kists* without a special agreement for that purpose (*Joykrishen Mukherjee V. Janki Nath Mukherjee*).[15A]

Each one of the superior tenure-holder used to collect some additional payments other than rent from their respective

tenants. The question was the payment must be legal. Let us discuss some of them, on which arose some legal complications and were adjudged by the Law Courts such as Abwabs, Road and Public Work Cesses, Chaukidari tax, Zamindari dak charges etc.

Abwabs, or imposition on tenants over and above actual rent, were not rent and could not be recovered as such, for they were not lawfully payable under sec. 74 of Bengal Tenancy Act. This section was, however, controlled by Sec. 179 of the same Act, which provided that 'nothing in this Act shall be deemed to prevent a proprietor or holder of a permanent tenure in a permanently settled area from granting a permanent *mokurrari* lease on *any* terms agreed on between him and his tenant." *Assannulla Khan Bahadur V. Tirthabasini*[16] the court after holding that the *chowkidari* tax which the *patnidar* has contracted to pay the Zamindar was not an abwab or illegal case, observed, 'In the above view of the case it becomes unnecessary to consider the effect of the Section 179 of the Bengal Tenancy Act, which enacts that nothing in this Act or a holder of a permanent tenure in a permanently settled area from granting a permanent *mukarrari* lease on any terms agreed on between him and his tenant. There is, no doubt, some repugnancy between this section and section 74 of Bengal Tenancy Act ; but whether, following the principle enunciated by Lord Justice James in *Ebbs V. Boulnois* 'we regard the latter, which is a special provision as a qualification of the former, which is a general one, or, adopting the rule stated by Keating, J. in *Wood V. Riley* that of two repugnant clauses in a status the last must prevail, we give effect to the latter, there seems to be good reason for thinking that sec. 179 is not controlled by sec. 74.'

This view was followed in *Krishnachandra Sen V. Sushila Sundari*,[17] in which it was decided that a stipulation for the payment of an abwab in a permanent mukarrari lease was valid and that sec. 74 did not control sec. 179 of the Bengal Tenancy Act. The learned judges said in that case :—'Though it is somewhat difficult to suppose that the framers of the Act can

have intended to allow proprietors or permanent tenure-holders to stipulate for the payment of abwabs by their tenants, yet it may be that it was considered that an arrangement of this nature so objectionable and liable to give rise to oppression in the case of ordinary *raiyats*, was fraught with less danger in the case of permanent *mukarrari* lease-holders. Any how, the words of section 179, 'nothing in this Act', are so wide that it seems impossible to resist the contention of the learned pleader for the appellant, and we are, therefore, constrained to give effect to it.' The law seems to be that a stipulation for the payment of an abwab in a *patni* or a *darpatni* is valid.

Where, however, a permanent tenancy was created by a lease dated 1860, i.e. before the passing of the Bengal Tenancy Act of 1885, the provisions of Sec. 179 did not apply and the landlord could not recover any abwab from the tenant (*Apurva Chandra Ghose V. Kooram Ali.*[18] So also in a *mukarrari* lease executed long before the Bengal Tenancy Act of 1885 came into force there was an agreement to pay a certain sum as rent, and an additional sum as Zamindari *salami*, holi and other expenses, which were found to be arbitrary and extra charges imposed on the tenant on account of work done in the Zamindari *sherista* and for other purposes, and it was *held* that the extra amount described as Zamindari *salami*, etc. for expenses, was an illegal cess or abwab, and could not be regarded as forming part of the rent fixed on the holding (*Bepin Bihari Mitter V. Prokash Chandra Sarkar*).[19]

What was and was not an abwab must have depended upon circumstances of each particular case in which the question arose (*Padmanand V. Baijnath*).[20] Collection charges which a tenant agreed to pay, were not abwabs, and could be recovered if they were certain and definite in their nature and formed part of the consideration for the lease (*Mahammad Fyez V. Jamoo*).[21] In a *patni kabulyat* there was the following clause :— 'According to the practice prevailing in the *pergunnah* as shall annually pay the collection charges at the rate of 2 annas per Rupee along with the instalments of the annual rent,' Garth C. J. observed : 'We believe that agreements of this kind are

by no means unusual and if they are certain or definite in their nature and form part of the consideration for the lease, there is no reason why they should not be enforced.'[22] In *Eastern Mortgage Agency Company Vs Rai Ganpat Sing Bahadur*[23] a *thakurbari* cess, which was fixed at the rate one per cent on the *patni jamma* was held not to be an abwab.

Road and Public Work Cesses, payable by talukdars, were recoverable under section 41, Cl 2, of the cess Act, Act IX (B. C.) of 1880. That clause provided : "Every holder of a tenure shall yearly pay to the holder of the estate or tenure within which the land held by him is included, the entire amount of the road cess and public work cess, calculated on the annual value of the land comprised in his tenure at the rate or rates which may have been determined for such cesses respectively for the year as in this Act provided, less a deduction to be calculated at one-half of the said rates for every rupee of the rent payable by him for such tenure." There was, however, nothing in section 41, of the cess Act of 1880 to prevent a Zamindar from realising the whole amount of the cess from the *patnidar* under a contract. (*Eastern Mortgage Agency Co. V. Rai Ganpat Singh Bahadur*).[24] The same view was taken in the case of *Mohanand Saha V. Musst. Sayedunnissa*[25] also in *Sornomoyi V. Poresh Narain*,[26] *Sambhunath V. Harasundari*,[27] *Ashutosh Dhar V. Amir Molla*[28] and *Norendra Kumar Ghosh V. Gora Chand Jaddar*.[29]

The question which required to be considered in such cases, was the extent to which the parties had contracted themselves out of the provision of sec. 41 of the Cess Act, because to that extent only would their rights and liabilities be governed by the contract, and beyond that, the Statute must prevail. Accordingly, where in a perpetual *mukarrari* lease the rent was fixed by a clause which ran thus : "At varying *jamas*, to wit, at an annual uniform jama of Rs. 1,580/- from 1284 to 1291 (Fasli) and at an annual uniform consolidated *jama* of Rs. 1585 of the current coin from 1292 (Fasli) together with *abwab* such as salami for *Dussorah* and *Holi, Purkha Sair*, Road Cess, Public Works Cess etc. all of which were included in that very sum of

Rs. 1,585/-", it was *held* that the contract did not provide for the contingency which had happened in this case, namely, an increase in the amount of cesses levied by the State, and that, if any additional cess was imposed or if the amount of cess was increased the incidence of the new burden must be regulated according to the Statute. (*Mahanand Sahai V. Musst. Sayedunnessa*)[30]. Again, where a mourasi mukarrari lease contained covenant that the lease would pay, in addition to the fixed jamma, Road and Public work cesses at half anna per rupee as was levied at the date of execution of lease and that he would be bound according to the law to pay any other kind of cess or tax that government might hereafter impose, it was *held* that lessee undertook the liability to pay the cesses at half-anna per rupee according to the provision of the cess Act, and that consequently in the event of revaluation, the increased cesses would be payable by him. The judges said that, even if the lease bore the interpretation that the parties did not anticipate the contingency which had happened and did not make any provision for the same, it was clear that, according to the decision in the case of *Mohonand Sahai V. Musst. Sayedunnussa*, the provisions of the statute must be enforced (*Krishna Chandra Bose V. Mohendro Nath Bose*)[31]. Cesses were recoverable in the same way and under the same procedure and in similar instalments as rent, though they were not, strictly speaking rent. They were not charges on the estate in the same way as rent, and a sale for arrear of cesses only did not have the same effect on incumbrances as a sale for arrears of rent.

Chaukidari tax would not seem to come within the definition of "rent". But in *Asanullah Khan-Bahadur. V. Tirthabasini* and and other[32] where in a suit for arrears of Chowkidari tax payable to the Zamindar by the *patnidar* under the *patni* settlement the defence was that it was an illegal cess (abwab), and could not be legally recovered, it was *held* that as the payment of the chowkidari tax was one of the terms of *patni* settlement itself which was entered into between parties competent to contract and was made for valuable consideration,

and, moreover, as the amount which the *patnidar* agreed to pay as chowkidari tax was to be paid quite as much on account of the occupation of the property as that which was expressly called the rent and part of the ground-rent quite as much as the latter, it was not an *abwab* and was, therefore, recoverable. *Held* also, upon the objection of the respondents that the suit being one of the nature cognizable by a small cause court and valued at less than Rs. 500/-, no second appeal would lie under Sec. 586 of the Civil procedure code, that, as the consideration for the payment of the chaukidari tax was the occupation or the holding of the patni tenure, and as the payment was to be made periodically to be Zamindar by the *patnidar* and the amount agreed to the paid was lawfully payable, it comes within the definition of rent in the Bengal Tenancy Act, and that, therefore, a second appeal would lie. In distinguising *Erskine V. Trilochan Chatterjee*[33] where the contrary was held, the judges observed : "The contract in what case one by which the *patnidar* undertook to pay the *dak* charges, and that he not having done so, the Zamindar had to undergo the expense and to sue for the money. If that be so, and if the contract was not to pay the amount to the Zamindar in the first instance, the claim could not have been regarded as one for rent, and was rightly treated as one for compensation for the breach of contract."

Dak Cess did not appear to be rent according to the definition of rent contained in the Bengal Tenancy Act, S. 3, Sub-Sec. 5, since it was not paid for the use and occupation of land held by the tenant, nor was it an illegal cess. It was a cess levied by Government on Zamindars in consideration of the conveyence by Government of the *dak*. Tenants were not bound to pay it and the Zamindar could only realize it from them if the latter agreed to pay (S. 12, Act VIII B. C. of 1862). In the case of *Bishonath Sircar V. Rani Sarnomoyi*[34], where the patnidar, on acquiring the *patni* in 1250, bound himself to pay the Government *jama* of Rs. 4569 and also Rs. 200/-as *malikana* to the Zamindar, and where he engaged to obey and comply with all the laws of the Criminal, Revenue

and other courts enacted or to be enacted, the judges remarked : "We think Act VIII of 1862 was not intended to impose a new tax, but to consolidate and regulate an old liability. Primarily, the Zamindars are in all cases liable to Government ; but it was not designed to alter any right of reimbursing themselves from underholders which they might possess. In the case of *raiyats*, all liabilities are required by law to be consolidated and included in the *pattah*, and a liability beyond the stipulated rent could not be urged ; but this does not seem to be so in regard to intermediate holders, and, at any rate, the general engagement to comply with the laws of the different courts we take to be an acceptance of the criminal and other liabilities attached to the land. It would be no forced construction to include under these terms the liability to forward the *dak* imposed by the old custom and law. If, then the defendant was liable for the *dak* service under the old law, we are of opinion that he is liable to pay to plaintiff the *dak* charges under the new law." The case was remanded to find out whether in fact the plaintiff bore the *dak* service charges under the old law. In other cases, however, it had been held that it depended on the terms of their leases whether patnidars were liable to pay the *dak* charges or not. In *Saroda Sundari Debya V. Uma Charan Sarkar*[35] the terms of the lease, made while Sec. 10, Regulation of 1817, was in force between the parties, having clearly imposed on the patnidar the charge of the maintenance of the Zamindari *Dak*, it was *held* that this liability was not affected by the subsequent repeal of the Regulation by the Act VIII of 1862 (B.C.). So also in *Jilar Rahman V. Bijoy Chand Mahtab*,[36] where in a patni Kabulyat executed in 1855, the patnidar stipulated to pay the salary and the expenses of the *amalas* of the dak-chowki houses and to appoint them and to superintendent their work under the system of the Zamindari *dak* then in vogue, it was held that this stipulation imposed upon the patnidar the liability of paying the *dak* charges recoverable from the Zamindar, and that although the system had since been changed, the liability of paying such charges must have been taken to exist.

But in *Saroda Sundari Debya V. Tarini Charan Shaha*[37] the judges remarked : "The words of the *kabulyat* which we quote, viz. 'I am responsible and liable for the costs of all orders with regard to these villages which may be at any time passed by the Civil, Criminal and Revenue Courts and authorities', do not in our judgement make the patnidar liable to the present Zamindari *dak* assessment. It is doubtful if the terms used, under the old law, have rendered the *patnidar* liable. We think that they are certainly insufficient to impose on him the tax which by the Act is now imposed on the Zamindar."

So also in *Rakhal Dass Mukherjee V. Rani Sarnomoyi*[38], the plaintiff brought a suit to recover Rs. 514-0-5 (principal and interest), paid by him for *Dak* Charges under Act *VII* (B.C.) of 1862, and the defendant, who was admittedly the *patnidar*, contended that he was not bound by the terms of his lease to pay the sum demanded, the words of the lease being "I am responsible for all orders that may be from time to time passed by the Civil, Criminal and Revenue authorities of the district respecting these villages and for the expenses in carrying out these orders. It was *held* that the *patnidar* was not liable for a tax which was imposed on the Zamindar by Act VII (B.C.) of 1862. "The tax under Act VIII of 1862," observed the judges, "was imposed by the Legislature and not by any local order of the Zillah authorities ; and the Zamindar is liable. The terms of the lease in this case do not, in our judgement, make the lesses liable, and the words of the lease quoted above are certainly not sufficient to impose upon him the burden of paying a tax, which is leviable from the Zamindar. We cannot annex incidents to written contracts in matters with respect to which they are silent. In the case quoted by the judge (*Bishonath Sircar V. Rani Sarnomoyi*), the circumstances were not precisely the same. In that case, the suit was demanded to find whether the *patnidar* bore the *dak* service charges under the old law, and whether in that case, there appeared to have been a general engagement on the part of the patnidar to comply with all laws that might be

passed." In *Rohini Kant Kar V. Tripura Sundari Dasi*[39] also, it was that, although the pattah contained a provision that, if any item was laid upon the Zamindar over and above the *suddar jama*, the patnidar should bear a rateable portion of it, this provision did not include the charges connected with the Zamindari *dak*, because the Zamindari *dak* was a matter unconnected with the *suddar jama* which a Zamindar had to pay. This conclusion was also contained in *Maharaja of East Burdwan V. Shibanarain Roy*.[40]

Was the *dak* cess liable as rent ? Landlords could not recover or collect *dak* cess as rent. In *Watson V. Shrikrishna Bhoumik*, however, it was held that where *dak* cess was claimed under the contract by which rent was payable, it must have been regarded as rent, because it was claimed practically as part of rent.

Suits for *dak* cess were cognizable in small cause courts. A case, in which a Zamindar sued a patnidar for *dak* expenses according to his *patni jama*, was a case of a nature cognizable by a court of small Causes ; and as such, by sec. 27, Act—XXIII of 1861, no special appeal would lie (*Maharajadheraj Mahtab Chand Bahadur V. Radha Benode Chowdhuri*).[42] A suit by a Zamindar against his *patnidar* for the recovery of money expended on account of Zamindari dak charges, which the patnidar was bound by his contract to bear, was cognizable by courts of Small Causes, and, consequently, no special appeal lies (*H.S. Erskine V. Trilochan Chatterjee*).[43]

Several problems connected with Rent payments may also be discussed. The foremost among them is deposit of rent by the Patnidar. Section 61 of the Bengal Tenancy Act was applicable to patni tenures. That section provided :

"(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 is bound to pay money 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 co-sharers for the money, and no person has been empowered to receive the rent on their behalf ;

(d) when the tenant entertains a *bona fide* doubt as to who is entitled to receive the rent, 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."

There can be no doubt that, under Act VIII of 1869, a *patnidar* could deposit rent in Court. In *Thakur Das Gossami V. Peary Mohun Mukherjee*[44] it was *held* that a *patnidar* may deposit his rent in court under Sec 46, Act VIII of 1869, the term "under-tenant" in that section being wide enough to include *patnidars*. Act VIII of 1869 provided for only one case in which rent could be deposited in court, viz., when the tenant had rendered the rent to his landlord, and the landlord had refused it. This provision had been incorporated in section 61 of Act VIII of 1885, and a *patnidar* could deposit rent in court under the latter Act also.

What were the effects of withdrawal of deposit by landlord ? In a suit decided by the Privy Council, in which *patnidar* deposited two years' rent under this act and the rent was withdrawn by the landlord by a petition, stating that "my tenant had deposited Rs. 1,043 rent due to me," it was *held* that by such action the landlord must be regarded as having elected to recognise and confirm the patni-tenure (*Madhu Sudan Sing V. Rooke.*[45] The mere deposit of rent in the collector's office by the purchaser of an under-tenure in his own name and that of the registered tenant was not sufficient notice of such purchase to the Zamindar, nor was the mere acceptance by the Zamindar of rent so paid an acknowledgement on his part of the purchaser as his under-tenant ; but it was otherwise

when there was acceptance with notice, notwithstanding that the transfer had not been registered (*Mritunjai Sarkar V. Gopal Sarkar*).[46]

What was the remedy when excess rent was exacted by the Zamindar ? Any sum, which was collected by a landlord in excess of the amount due to him under the agreement with his tenant, was an exaction for the recovery of which a suit would lie under Sec. 75 of the Tenancy Act. It was not, however, an exaction when the excess was recovered by legal process,. Where, for instance, a tenant supplied the Zaminder with rice on the agreement that the value of the rice was to be deducted from the rent and Zamindar, without making the deduction sued the tenant under Reg. VIII of 1819, and recovered the full amount of the rent, it was *held* that this was not an exaction under this section. "The tenant", observed the Court, "might have contracted his liability to pay the amount, and might have a demanded a summary investigation as to the amount due, and he might have stayed the sale of his tenure by depositing the amount claimed. Instead of doing so, he paid the amount claimed to the Zamindar. The Zamindar having recovered the amount undue exaction. He possibly might have demanded more than was due after allowing for the rice supplied, but the defendant, instead of demanding an investigation, paid the amount claimed with knowledge of all the facts. Can this be said to be an illegal exaction of rent within Sec. 10, Act X of of 1859 ? We think that it is not an illegal exaction of rent within the meaning of that Act (*Chandramoni V. Debendro Nath*).[47] It could be observed that a suit to recover a sum of money alleged to have been paid by the plaintiffs to the defendants in excess of the sum demandable by the latter from the former on account of roadcess and public works cess, was governed by Act. 96 of the limitation Act (*Mathuranath V. Steel*).[48]

Now to the enhancement and abatement of Rent. There was no provision in Regulation VIII of 1819 for enhancement or abatement of rent. Legal protection had to wait till the provisions of S. 52 of the Bengal Tenancy Act, which were

applicable in such cases, the object of S. 195 (e) of the latter Act being that the Bengal Tenancy Act should be held as suppleting the patni law (*Durga Prosad Bandopadhya V. Brindaban Roy*).[49] Section 52 of the Bengal tenancy Act said : "52.(1) Every tenant shall :

(a) be liable to pay additional rent for all land proved by measurement to be in excess of the area of 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 ; and

(b) be entitled to a reduction of rent in respect any deficiency proved by measurement to exist in the area of his tenure of 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 of holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

52. (2) In determining the area for which rent has been previously paid, the court shall, if so required by any party to suit, have regard to :

(a) the origin and conditions of the tenancy, for instance, whether the rent was a consolidated rent for the entire tenure or holding ;

(b) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise, with the knowledge and consent of the landlord ;

(c) the length of time during which the tenancy has lasted without dispute as to rent of area ; and

(d) the length of the measure used or in local use at the time of the origin of the tenancy, as compared with that used or in local use at the time of the institution of the suit.

52. (3). In determining the amount to be added to the rent, the court shall have regarded to the rates payable by tenants of the same class for lands of a similar description and with

similar advantages in the vicinity, and, in the case of a tenure-holder to the profits to which he is entitled in respect of the rent of his tenure ; and shall not in any case fix any rent which, under the circumstances of the case, is unfair or inequitable.

52. (4) 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 of 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.

52. (5) When in a suit under this section the landlord or tenant is unable to indicate any particular land as held in excess, the rent to be added on account of the excess area may be calculated at the average rate paid on all the lands of the holding exclusive of such excess area."

It very frequently happened that a lease which conveyed a certain number of bighas with certain defined boundaries, contained in reality a greter quantity of land than was specified ; and the question whether this excess land was liable to assesment furnished a constant source of litigation. It seemed however to be tolerably settled by a number of decisions that, where the boundaries were given, the lease covered all the land included within those boundaries, whether in excess of the quantity specified or not. In such cases the lease was not to be construed as a lease of so many bighas and no more, but as a lease of certain lands, the number of bighas being added more by way of description than of limitation (*Janaki V. Nobin*)[50]. Where the *pattah* purported to convey 1 bigha of land, more or less, and within certain boundaries, it was *held* that the test of what was really conveyed was not the area of land but the boundaries of that land (*Shib Chandra V. Brojo Nath*).[51] A tenant was held to be entitled to whole of the land comprised within the *dags* endorsed on the *pottah* as included in, and appertainiing to, his *mourasi* tenure, notwithstanding that

measurements made subsequently showed that the area was larger than was formerly ascertained (*Modee Haddin V. Sandes*)[52]. Where, however, the land was undoubledly included in the original tenure, but it was found on a fresh measurment that there was a mistake in the former measurement, the tenant was bound to pay rent for the excess land.[53] It may also be seen in *Puhlwan V. Moheswar.*[54]

A tenant could encroach upon the adjoining land of his landlord or he might do so on the neighbouring land of a third person. In the former case, the law was that the landlord might either treat him as a tenant in respect of the excess land or as a trespasser at his pleasure. (*David V. Ramdhon Chatterjee*[55], *Rajmohan Mitra V. Guru Charan Aich*,[56] *Shamjha V. Durga Rai*[57]; *Gulamali V. Gopal Lall Thakur*,[58] *Lohan Chandra Mitra V. Ram Ranjan Chakravarti.*[59] "We think," observed Markby, J, in *Gooroo Das V. Issur Chunder*[60], "the true presumption as to encroachment made by a tenant during his tenancy upon the adjoining lands of his landlord is that the lands so encroached upon are added to the tenure and form part thereof for the benefit of the tenant so long as the original holding continues, and afterwards for the benefit of his landlord, unless it clearly appeared by some act done at the time that the tenant made the encroachment for his own benefit. This is the clear rule of English law which is supported by reason and principle. In India, where there is a great deal of waste land, and where quantities and boundaries are very often ill-defined, there are very strong reasons for the application of such a rule. And the principle upon which the rule is founded is one of the general application, namely, that if an act is capable of being treated as either rightful or wrongful, it shall be treated as rightful. We know of one case in which the principle has been expressly recognised by judicial decisions in India but it is in accordance with the principle laid down by Section 4 of Regulation XI of 1825 as the increase of land by alluvion. In practice also encroachments made by the tenant are considered as held by him absolutely for his own benefit against his landlord, if it were so, the

tenant would in twelve years necessarily gain an absolute title under the stature of limitations ; but we do not know of any case in which a title has been thus established."

In *Prahlad V. Kedar Nath Bose*,[61] it was *held* that "when a tenant encroaches upon the land of his landlord, though the landlord may, if he chooses treat him as a tenant in respect of his land encroached upon, the tenant has no right to compel the landlord against his will to accept him as a tenant in respect of that land." But it does not follow that, if the landlord has exercised his option to treat him as a tenant for sometime, he cannot turn round and treat him as a trespasser at any time (*Abdul Hamid V. Mohini Kanta Saha*).[62] In the latter case an encroachment made by a tenant upon land adjoining to, or even in the neighbourhood of, his landlord was presumed, in the absence of strong evidence to the contrary, to be made for the benefit of the landlord, and this rule applied to all lands so encroached upon, whether the landlord had any interest in them or not. In such cases the landlord was entitled to additional rent for the lands so added (*Naddiar Chand Saha V. Meajan*).[63] And even if he had acquired a title against the third person by an adverse possession, he had acquired it for his landlord and not for himself.[64]

Where land accreted to an under-tenure the right of occupancy in the land passed to the owner of the under-tenure, and not to the Zamindar. The general law upon the subject was contained in Cl. 1, Sec. 4, Regulation XI, 1825, which ran as follows : "When land may be gained by gradual accession, whether from the recess of a river or of the sea, it shall be considered as an increment to the tenure of the person to whose land or estate it is, thus annexed, whether land be held immediately from Government by a Zamindar, or as a subordinate tenure by any description of under-tenure whatever : provided that the increment of the land thus obtained shall not entitle the person in possession of the estate or tenure to which the land may be annexed, to a right of property or permanent interest therein beyond that possessed by him in the estate or tenure to which the land may be

annexed ; and shall not in any case be understood to exempt the holding of it from the payment of Government of any assessment for the public revenue to which it may be liable under the provisions of Reg. II, 1819, or of any other Regulation in force. Nor, *if annexed to a subordinate tenure* held under a superior landlord shall the undertenant, where a *Khudkasht* raiyat holding a *mourasi intemrari* tenure at a fixed rate of rent per *bigha* or any other description of under-tenant, *liable by his engagements or established usage*, to an increase of rent for the land annexed to his tenure by alluvion, be considered exempt from the payment of any increase of rent to which he may be jointly liable." Clause I, Sec. 4 of Regulation XI of 1825, referred to only under-tenants, intermediate between the Zamindar and the raiyat, and to *Khudkast* or other raiyats who possessed some permanent interest in the land. (*Zaheruddin V. Combell*).[65] The party to whose lands new formations gradually accreted was entitled to them though he may not have lost any lands, and though the accretion might have been caused by the washing away of lands of another person (*Adoomeah V. Shiba Sundari*).[66] As long as any portion of the estate was in existence, the Zamindar was entitled to claim the land accreting to it as forming by law part of that estate (*Bhooban Mohun V. Watson & Co.*)[67]

Rents must be raised according to conditions laid down in Reg. XI of 1825. Where the land had been added to the *jote* of a tenant by gradual accretion, the landlord was entitled to an increased rent on account of such accretion on on the conditions laid down in Reg. XI of 1825 (*Shoroshutti Dassee V. Parbutty Dasee*),[68] also in (*Gopi Mohon V. Hill*)[69] A suit for enhanced rent lie for the increase of the area of a *jote* after accretion (*Hara Sundari V. Gopi Sundari*[70] *Brojendra Kumari V. Upendro Narain*[71], *Ramnidhi V. Parbati Dassi*).[72] The accretion should be assessed at the same rate as the parent tenure (*Golam Ali V. Kalikrishna*)[73]. In this case, however, it was not laid down that there should be an inflexible rule applicable to all cases, but, having regard to the particular circumstances of that case, it was thought that the

accreted land should bear the same rent as was payable in respect of the land included in the original tenure (*Chooramonee V. Howrah Mills Company*,[74] where a *mukarrari* was granted at the full letting value of the land comprised in it, it would be unjust to assess the newly-added land at the rate of the original *mukarrari* if the accreted lands be of inferior quality ; on the other hand, if the accreted lands be of superior quality or, if in fixing the mukarrari rent, a lower standard than the full letting value was adopted in consideration of any bonus paid, it would be unjust to the landlord to fix the rent of the accretion at the rent fixed in respect of the original tenure.[75] But in the absence of any special circumstances, the rate of rent to be asssessed upon the accretion should be in proportion to that paid for the parent tenure.[76] An increment was to be regarded as part of the parent tenure, and the landlord could not treat the increment as a separate tenure altogether and treating it as a part and parcel of the parent tenure, he could not claim such relief as under the law he was entitled to obtain as against the tenure-holder. (*Asanullah V. Mohini Mohan*).[77] If there had been a diluvion, and the tenant was paying on for the portion washed away, the reformation of that portion will not make him subject to enhancement. If, however, after the diluvion he had obtained a reduction of the rent, a reformation will again subject him to enhancement. (*Hem Nath Dutt V. Ashgur Sirdar*).[78]

There was nothing in the Bengal Tenancy Act to debar the landlord from claiming back-rent for any additional area, if such additional area was in the use and occupation of the tenant (*Jugarnath V. Jumnan*[79] ; also *Assanulla V. Mohini Mohon*).[80] There was no provision in Section 52 or in any other section as was to be found in Sec. 154 which prescribed the time from which a decree for enhancement of rent was to operate.[81]

A suit for enhancement of rent could not be maintained by one joint landlord making the other joint landlords defendants in the suit (*Roy Jotindro Nath Chowdhuri V. Prosunno Kumar Banerjee*).[82] Sec. 188 of the Bengal Tenancy Act required that where two or more persons were joint proprietors,

they must all join in bringing a suit for additional rent for additional area (*Gopal Chunder V. Umesh Narain*).[83]

Now about the abatement of rent. Before the passing of the Bengal Tenancy Act (VIII of 1885), a tenant was entitled to an abatement of rent on the ground of diluvion unless precluded by the terms of his kabulyat from claiming such abatement. In *Afsarooddeen V, Musst, Shorashi Bala,*[84] a talukdar claimed an abatement on the ground that a portion of his taluk had been washed away by a river; and the question arose whether he was entitled to claim diminution of rent on this account. The court *held* that he was entitled, *unless there was an express stipulation that he should pay whether the land was washed away or not.* "If a man", observed the Chief justice, "stipulates to pay rent, it is clear he engages to pay it as a compensation for the use of the land and independently of Sec. 18, Act X of 1859. We are of opinion that, according to the ordinary rules of law, if a talukdar agrees to pay a certain amount of rent the tenant is exempt from the payment of the whole rent if the whole of the land be washed away. According to English law a tenant is entitled to abatement in proportion to the quantity of land washed away, and he is entitled to that abatement in a suit brought by the landlord for arrears of rent."

This question was further discussed in a subsequent case in which the tenant claimed an abatement upon the ground that part of his land had been washed away, and that a part of it had been covered with sand. "We think," observed the Chief Justice, "upon principles of natural justice and equity that if a landlord lets his land and a certain rent to be paid during the period of occupation, in such a state that the tenant cannot enjoy it, the tenant is entitled to an abatement. The first question then is whether there was any stipulation in the *kabulyat*, which precluded the tenant from claiming an abatement, if, by an act of God any portion of his land was washed away? If it is found that, according to an express stipulation in the *kabulyat*, the tenant is not entitled to any abatement by reason of any part of the land by the act of God, then the tenant is not entitled to abatement during the

term of that lease. But it is said the lease is at an end; but we think that, when a tenant holds on after the expiration of the lease, he does so on the terms of the lease at the same rent and on the same stipulation as are mentioned in the lease, until the parties come to a fresh settlement." (*Sheik Inayet Ullah V. Sheik Elahee Buksh,*[85] also *Ram Churan V. Lucas.*[86] Now, under Sec. 179 of Bengal Tenancy Act of 1885, there is nothing to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent *mukarrari* lease on any terms agreed on between him and his tenant. Thus in *Nandalal Muherjee V. Kymuddin Sardar,*[87] where a tenant held under a permanent *mukarrari* lease which contained a clause to the effect that "the cultivation, non-cultivation, decrease, increase, diluviation or accretion, profits and loss of the same land are all at my risk," it was decided that he was not entitled to get abatement of rent by reason of a portion of the land in his occupation having been diluviated by the action of this river.

A tenant was entitled to an abatement of rent not only when the area had been reduced by diluvion, but owing to other cause. Thus a *patnidar* claimed abatement of the *jama* of his patni on account of the lands taken up for the public purposes, as well as refund of the rents paid in excess for a number of years. *Held* that a patnidar can sue for abatement under Act. X of 1859 (*Prosonno Moni Dassi V. Sundari Coomari Debya*).[88] A patnidar may claim abatement upon the ground that the land is absolutely lost to him and he is also entitled to some share of the compensation-money (*Bhowani Charan Chuckerbutty V. Land Acquisition Deputy Collector of Bogra and another*).[89] The same view was taken in the case of *Lala Jyoti Prokash Nandi V. Jogendra Narain Roy.*[90] In a suit for rent by a Zamindar against a patnidar, the latter claimed an abatement of the rent on the ground that part of the land included in the patni tenure had been acquired by Government for public purposes. The *kabulyat* executed by the patnidar contained a provision to the effect that, if any of the land settled should be taken up by Government for

public purposes, the Zamindar and the patnidar should divide and take in equal shares the compensation-money and a further provision to the effect that the patnidar should "make no objection on the score of diluvion or any other cause to pay the rent fixed or reserved by the *kabulyat*." *Held* that the patnidar was entitled to the abatement. In this case Field J. in construing the clause in the stipulation observed: "It appears to me that the taking of the land by Government for a public purpose is not a cause of the same nature as diluvion and for this reason: When land is washed away by the action of the river, the thing itself out of which the rent issues is destroyed, certainly for a time, although it is quite possible that by action of the same river there may be a reformation. But, in the case of reformation, the custom of the country is that where an abatement has been allowed for diluvion, enhancement is claimable for alluvion. When land is taken up by the government, the thing itself, out of which the rent issues is not destroyed, it continues to exist and Government pays what must be taken to be the market value of the land at the particular time. It, therefore, appears to me that it is impossible to say that the taking of land by Government for public purposes in a cause *ejusdum generis* (of the same kind) with diluvion". Morris J. remarked: "In construing this document it cannot reasonably be held that the taking of part of the land by the Government for the purposes of a railway is *ejusdum generis* with land abating or increasing by reason of diluvion and alluvion, or, in other words, by the act of God; and I am strengthened in coming to this conclusion when it is manifest that there was present before the minds of the parties at the time the patni settlement was granted by the plaintiff, the fact that the government was likely to take a portion of the land included in the settlement for the purposes of railways; and if the parties intended that there should be no abatement of rent when Government exercises its powers, in addition to making an express provision for the distribution of the compensation-money; they should have further stated that there would be no

abatement of rent". (*Umashankar Sarcar V. Tarini Chandra Singha*).[91]

A Kabulyat contained the following clauses:—"In regard to the aforesaid rent we take upon ourselves the risk of flood and drought, of death and flight, of alluvion and diluvion, of profit and loss. In no case shall we be able to claim at reduction in the rent, nor will it be open to you to demand more on account of alluvion etc." During the lease, a portion of these lands was taken up by Government for the purposes of a railway and compensation was paid to the lessor. The tenant claimed to make a deduction from his rent for the land taken away from him. *Held* that such a claim did not come under the meaning of the word "abatement" as used in the Rent Law, nor was it intended by the parties to be within the clause of the lease, but that the land having been taken from the whole area demised, not by natural causes, but by *vis major*, the *ijaradar* was entitled to a deduction from the rent on his showing that there were tenants of his on the land, who, before the land was taken by the government paid rent to him which they had now ceased to pay (*Watson & Co. V. Nistarini Gupta*).[92]

A patnidar may claim abatement on the ground that portions of the land included in the *patni* have been resumed as *chakeran* by Government (*Haro Krishno Banerjee V. Joykrishna Mukherjee*).[93]

Where a tenant, after obtaining a lease for a certain quantity of land, was evicted from a portion of it owing to the defective title of his lessor, it was *held* that he was entitled to an abatement of rent. 'When a landlord", observed the Court, "leases away portion of land without any further stipulation with regard to the title, he does thereby impliedly undertake that he has sufficient title to support the lease, and he guarantees the tenant quiet possession and enjoyment. This is the result of the law of England, and we believe that it has always been held to be the same before." (*Brojonath Pal Chowdhuri V. Hiralal Pal*).[94] If the tenant be evicted from the lands demised, or they be recovered by a title paramount, the lessee is discharged from the payment of the rent from

the time of such eviction, and if he is evicted from a part, the rent is to be diminished in proportion to the land from which he is evicted (*Gopanund Jha V. Lalla Govind Pershad*)[95]

Abatement was allowed on the ground of misrepresentation of assets. A patnidar sued his Zamindar and obtained a decree for abatement of rent on the ground that the assets of the patni fell short of the amount stated in the lease. *Held* that the abatement was to take effect from the commencement of the patni lease (*Raja Nilmoni Singh Deo V. Saroda Prosad Mukherjee*).[96] So also, 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 for 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 (*Siba Kumari Debi V. Beprodass Pal Chowdhuri*).[97]

A suit for abatement of rent by a patnidar on the ground of fraud, caused by the concealment from him of the existence of an intermediate tenure created by the Zamindar, is maintainable under Sec. 23, Cl. 3, of Act X of 1859. Sec. 18 of that Act is not applicable to such a case (*Sooker Ali V. Umola Ahyalya*).[98] In a suit for arrears of rent from a patnidar where the plaintiff stated that he had, on an allegation made by the defendant, that a dacoity had taken place in her house, allowed her an abatement, but finding from a judgement of the High Court that no such dacoity has taken place, he claimed full rents, it was contended on his behalf that this grant of abatement of rent by him was a voluntary act on his part from which he could resile at any moment. The Judges, however, remarked that as "no notice of such intention" to resile from the agreement was given to the defendant, we think that the argument cannot be sustained even if the contention is correct in law, upon which we give no opinion." (*Raja Enayet Hossain V. Bibi Khoobunnissa*).[99]

What were the circumstances in which the patnidar could not claim abatement ? If the tenant knew that the area of land leased to him was less than that mentioned in his pottah, it was *held* that he was entitled to an abatement of rent on this

ground (*Tripp V. Kali Dass Mukherjee*).[100] Nor would he be entitled to an abatement, if he came into possession of a less quantity of land through his own fault (*Sitanath Basu V. Sham Chunder Mitra*).[101] In *Peary Mohan V. Aftab Chand*[102] a portion of certain land held under a patni having been taken up by the Government for public purposes under the Land Acquisition Act, the Zamindar declared his intension of granting no abatement of rent, and, acting upon this declaration, the patnidar was allowed to appropriate the whole of the compensation. The *Patni* was subsequently sold under Reg. VIII of 1819, with notice of the amount of the original rent, and the purchaser now sued for abatement of that rent. He did not allege that he had no notice of the proceedings under the Land Acquisition Act. *Held* that the plaintiff must be presumed to have had notice of these proceedings, and that it was, therefore, incumbent upon him to have made enquiry regarding the position of the *patni*, and that, under the circumstances, he was not entitled to the abatement sought for.

How abatement could be claimed ? Under the old tenancy law a tenant, who claimed an abatement of rent, had three courses open to him. He could either sue for a reduction of rent or wait until sued by his land-lord and then plead that he is entitled to a certain reduction (*Afsarooden V. Musst Shoroshee Bala Debi*),[103] or he might complain of an excessive demand of rent, and sue for a refund of the sum which had been exacted from him. When a raiyat had been compelled to pay an excess rent for 1265 of Rs. 99, for 1266 of Rs. 199, for 1267 of Rs. 195, for 1268 of Rs. 1126, in all Rs. 1617, and sued the Zamindar to recover the excess, it was *held* that the suit was not barred by limitation under Sec. 30, Act. X of 1859. "No doubt", observed the Court, "when a diluvion took place, the plaintiff had a right of suit to obtain an abatement of his *jama*, if the Zamindar had refused to grant such abatement. But he was not bound to sue for that purpose. He was not actually injured until compelled to pay the rent named in the *pattah* without the allowance of the abatement be claimed. Upon that payment having been extorted from him, he had a new right of

action, and as the suit would appear to have been brought within one year from that date, we think it was in time". (*Barry V. Abdool Ali*;[104] *Raja Nilmoni Singh V. Annoda Prosad*).[105] From Sec. 52(1) (b) of the Bengal Tenancy Act, it was not clear whether reduction of rent on account of a decrease in area could be claimed as a set-off or only in a suit brought for the purpose. The words "every tenant shall be *entitled*" in that section seem, however, to point to the conclusion that both these courses are open to him. As rent is a recurring cause of action, a tenant may set up a claim to abatement in a suit for the rent of any particular year, notwithstanding the fact that he has paid full rent for several previous years (*Mahtab Chand V. Chitro Kumari*).[106] But where the defendants (darpatnidars) who were sued for arrears of rent by the plaintiffs (patnidars), alleged that a part of the land had been taken up by Government twentyfour years previously for the purposes of a railway, and claimed an abatement on that ground, it was *held* that though the limitation Act may not prevent a defendant from setting up such a defence, still the great delay in this case, combined with other circumstances, disentitled the defendants to any relief in a Court of Equity (*Ram Narain Chuckerbutty V. Pulin Behari Singh*),[107]

How the quantum of deduction was ascertained ? When once it was determined that a tenant was entitled to an abatement of rent in consequence of the subject of the demise having been diminished, whether by reason of its destruction as in the case of diluvion, or otherwise, the only thing that required to be settled was, what was the amount, what was the portion of original rent, which was referable to the portion of the tenure which had disappeared ? Where there was nothing in the *pottah* to show that the rent was apportioned in parcels to the different parts of the whole land held in *patni*, the only way to arrive at a conclusion as to how much of the whole rent was attributable to this particular portion was to deal with it as a matter of proportion only ; i.e. such a sum ought to be deducted from the whole rent as would bear to that whole rent the same proportion as the annual value of the portion of the

land originally leased (*Brojonath Pal Chowdhury V. Hira Lall Pal*).[108] The same principle was laid down in *Lala Jyoti Prokash V. Jogendra Narain Roy*[109] and applied to the case, where it was found that the Zamindars had taken the whole of the compensation-money, which was assessed at 20 times the annual rental of the portion of the patni acquired by Government under the Land Acquisition Act, and it was *held* that the patnidar was entitled to a remission of the amount which represented the annual rent.[110] This principle is in conformity with that laid down in Cl. 4, Sec. 52 of the Bengal Tenancy Act.

In *Nobo Durga Dasi V. Foyzbux Chowdhury*[111], the plaintiff obtained a patni lease of certain villages from the defendant in 1861 at an annual rent, and in 1865 was evicted from a portion of the property. She took no step to obtain an abatement ; but, inasmuch as she did not pay any rent for the year 1871, the defendant brought a suit against her for the rent of that year. The plaintiff set up the defence that she was entitled to an abatement of Rs. 155 from her rent, the sum representing the annual value of the property which she had lost in consequence of the eviction. In that suit it was decided that the amount of abatement she was entitled to was Rs. 42. No appeal was made against this decision, In a suit brought by the plaintiff for the purpose of obtaining a permanent abatement of her rent, she claimed the precise measure of abatement, viz., Rs. 155, which she had claimed in the rentsuit brought against her by the defendant. *Held* that the question was *res judicata*, it having been raised and decided in the former suit and the question of abatement having been determined between the parties not only for the year of which the rent was in suit, but for all future years.

Where a bonus was paid for a patni taluk not in existence, there was an entire failure of consideration, and the person paying the bonus was entitled to a refund of it. The principle *Caveat Emptor* was not applicable to such a case (*Kesto Lall Moitra V. Nobo Koomar Roy*).[112] In *Mukunda Chunder Roy V. Pran Kishen Pal Chowdhury*)[113], which was a suit to recover the consideration money paid by the plaintiff for a patni lease

which the plaintiff had been induced to take by the fraudulent representation of the defendants that khas possession would be given to him, it was *held* that the plaintiff's proper course was to repudicate the lease and to bring his action as soon as he found he could not get the kind of possession which he had paid for, instead of waiting for nearby five years : there having been great delay and partial possession having been obtained under the patni lease, the suit was dismissed. A Zamindar (A) gave certain villages in patni to (B) and receive consideration-money and rent for them from him ; but B never got possession of them or derived any benefit from the *patni*, it having been found that the villages belonged to a third party *lakherajdar*. The latter obtained a decree against A in a suit to which B was made a party. *Held* that the advertisement published by A setting forth a description of the villages and calling upon intending purchasers to come forward, was substantially an implied warranty of the title and would in any case, make him responsible to the purchaser, deceived by such misrepresentation. *Held* also that, in cases like this, it would be sufficient proof of fraud to show that the fact of ownership as represented was false, and that the person making the representation had knowledge of a fact contrary to it. *Held* also that, fraud having been substantially alleged, the absence of a stipulation to refund did not protect A from refunding (*Rajah Nilmoni Singh V. Messrs. Gurdon-Stuart & Co.*)[114]

A claim for a refund of rent paid in excess must be brought in the Civil Court (*Prosunno Coomari Dassya V. Sundar Coomari Debya*)[115], where the plaintiff had, in a former suit to recover a part of the consideration money and the excess rents paid by him on a *patni* settlement which the defendants had induced him to take on a false misrepresentation regarding the lots included in it, obtained consequential damages, it was *held* that he could not succeed in a second suit to get back the so-called excess of rent paid by him in terms of the *patni pottah* since the institution of the first suit. When once the cause of action was matured, the subsequent occurrence of further damage after or before the adjudication of the original matter

does not originate a fresh cause of suit (*Raja Nilmoni Singh Deo V. Issur Chandra Ghosal*).[116]

This decision was, however, overruled in *Raja Nilmoni Singh Deo V. Annoda Prosad Mukherjee and others*[117] in which it was held that where in a former suit, the plaintiff, a *patnidar*, sued his Zamindar for abatement of rent and for a refund of the consideration-money and rents paid by him for three years, a suit for a refund of rent for three subsequent years is not barred. The plaintiffs held a *patni* under the defendant sometimes in the latter part of 1277 (1870). Government took up for public purpose 147 bighas of land out of the *patni*, but the defendant, inspite of that fact, continued realising the full amount of the former *patni* rent till the end of 1280 (1173). In 1280 (1873), the plaintiffs brought a suit for an abatement of rent on the ground of diminution of the area by the act of Government and got a decree, reducing the rent proportionately. The plaintiffs then brought this suit for refund of the rent paid by him in respect of this 147 bighas for the last half of 1277, and for the years 1278 to 1280, being the period during which they had paid for, but had not enjoyed, that portion of the *patni*. *Held* that the plaintiffs may sue for a refund of the rent paid by them, before instituting the suit for abatement of rent, in excess of the amount justly payable, notwithstanding that they might have, if they have chosen, included this claim in their suit for abatement of rent (*Akhoy Kumar Chattopadhyaya & Others V. Mahatap Chand Bahadur*).[118]

A patnidar was entitled to compensation for land taken for public purposes, although there was no agreement to that effect (*Joy Kishen Mukherjee V. Reazoonussa Begum*).[119] Where a portion of a *patni* was acquired by Government under the Land Acquisition Act, the patnidar was entitled to an abatement of rent as the land taken up by Government was absolutely lost to him, and he was also entitled to some share of the compensation money. (*Bhabani Nath Chukerbutty V. Land Acquisition Deputy Collector of Bogra and Maharajah Jotendra Mohan Tagure*).[120].

How was compensation apportioned ? The total compen-

sation awarded for the lands taken up under the Land Acquisition Act proceedings should be distributed amongst the various persons interested in the property, in proportion to their respective interests. The only difficulty in practice was how to value the interest of each person concerned. In considering the principle on which the amount of compensation should be divided, it should always be remembered that the Zamindar was an annuitant, and the *patnidar* the real proprietor of the land. "The security for the annual payment", observed Mr. Justice Mitter in his work, *The Land Laws of Bengal*[121], "is all that the annuitant may fairly claim if no abatement is allowed. If, however, abatement is allowed, he is entitled to the capitalized value of the amount of his annual loss. It is difficult to see how he can get anything more, having parted with his proprietory right reserving only an annual sum". The same principle was enunciated in the case of *Kanai Lall Khan V. Midnapur Zamindari Co.*[122] "So far", it was observed, "as the Zamindar is concerned, his interest is limited in perpetuity. That interest is to receive a certain amount of rent from the *patnidar*. So far as the *patnidar* is concerned he has the rest of the interest in the land vested in him. The value of the interest of the Zamindar is to be determined by capitalizing what he has lost. This is to be calculated by ascertaining the rent payable to him and deducting from it the government revenue payable. This respresents his net profit which he has lost by reason of the acquisition".

The authorities on this subject were, however, conflicting. In one of the oldest cases, *Sreenath V. Maharajao Mahtab Chand Bahadur*[123] the Sudder Dewani Adawalut said : "The Zamindar and the *patnidar* are entitled to compensation in proportion to the losses they respectively sustained from the appropriation of their lands and the remission of the rents which they pay respectively to the government or the Zamindar. In respect of remission, as the gross rental of the whole *patni* is to the gross rent of the land proposed to be taken, so will the entire *patni* rent be to the particular portion if the rent to be remitted; and, with regard to compensation, the principle may most conveniently be stated as follows : As the gross profit of the *patni* is to the profit of the *patnidar*, so will the gross compensation be to the portion of the compensation the *patnidar* is entitled to recover."

In the case of *Maharaj Mahtab Chand Bahadur V. The Bengal Coal Co.*[124] however, it was *held* that the principle laid down in the above case by the Sudder Court to regulate the compensation for land taken for public purposes was not applicable to the division of compensation in every case. It would not provide for the case of several *patnis* where the land was taken from the holder of the last tenure, and where the grantors of the several intermediate tenure have received a sum of money as a bonus for the grant. In *Rai Kishori Dassi V. Nilkanta De*[125], where land held in *patni* was taken by Government for public purposes, it was laid down that the proper mode of settling the rights of the parties interested was to give the *patnidar* as abatement of his rent in proportion to the quantity of land which had been taken from him and to compensate the Zamindar for the loss of rent which he had sustained. "The Zamindar" observed Couch C. J., "has a right to the fixed rent and the loss which he sustains is of so much of his rent. Any other possible injury, such as the chance of the *patnidar* throwing up the land and its being diminished in value by what has been taken by Government, and still remaining as it did liable to pay the same revenue is, we think, not appreciable, and cannot be taken into account. If there is no abatement of rent, and the *patnidar* continues being liable to pay to the Zamindar the same rent as he had to pay before, there would be nothing for which the Zamindar ought to receive compensation. But the proper mode of settling the rights of the parties is to give to the *patnidar* an abatement of his rent in proportion to the quantity of land which has been taken from him... That being so, the Zamindar ought to be compensated for the loss of the rent which he sustains, and the money ought to be divided between the parties accordingly. The patnidar's getting an abatement of the rent is to be taken into account as partly the way in which compensated for the loss of the land." Accordingly, the com-

pensation awarded was held to have been very fairly distributed where the Zamindar received a little more than 16 years' purchase of the rent abated and the *patnidar* received the remainder.

So also in *Kumar Dinendra V. Tituram*[128], it was *held* that in apportioning compensation under the Land Acquisition Act between a Zamindar and a tenure-holder under him, the Court ought to proceed on the principle ascertaining what the real interest of each party was in the property and what was the interest each party parted with. Where the lease was permanent and at a fixed rent, the chances of the lease coming to an end or being forfeited being scarcely appreciable by a money-payment, the interest of the landlord cannot be put higher than the fixed rent he received and for this he was entitled to be compensated at so many years' purchase. The tenure-holder, who was the real beneficial owner in such a lease, was entitled to the whole of the remaining portion of the compensation-money.

The principle laid down in these cases was in accordance with the rule laid down by the Sudder-Dewani Adawlut in *Sreenath V. Maharajah Mahtab Chand Bahadur* referred to above. But the High Court did not adhere to it. In *Godadhar Dass V. Dhunpat-Singh*[127] it was *held* that where a *patni* and a darpatni had been given of a piece of land which was afterwards acquired by the Government for public purposes under the provisions of land Acquisition Act the Zamindar was generally speaking entitled to as much of the compensation-money as the *patnidar* was. As a rule, raiyats having a right of occupancy in such land and the holders of the permanent interest next above the occupancy-raiyats were the persons entitled to a large portion of the compensation-money. Garth, C.J., laid down in this case the principle on which the compensation-money should be apportioned among the different holders as follows :—"As regards the Zamindar, it is a mistake to suppose that his interest in the land is confined entirely to the rent which he received from the *patnidar*. He is the owner of it under the Government, and in the event of the *patni* coming to an end by sale, forfeiture, or otherwise,

the property would revert to the Zamindar, who might deal with it as he pleased in its improved state, and although in some cases, and possibly in this the chances of the *patni* coming to an end may be more or less remote, there is no doubt that in all cases the Zamindar is entitled to some compensation (small though it be) for the loss of his right. At any rate, he would generally be entitled to receive as much as the *patnidar* to whom in this instance the whole compensation has been awarded by the District Judge. If the latter continues to pay and receive the same rent which he did before, or if, on the other hand, he both makes an abatement to the *darpatnidar* and obtains an abatement from the Zamindar, as a rule he is no sufferer ; because generally speaking, the difference between the amount of rent, which he pays and the rent which he receives, represent the improved value of the land which he gets from the *darpatnidar*. It may be, of course, that his *patni* interest would sell in the market for a price larger than the capitalized value of the rent which he receives from the *darpatnidar* and if so, he would be entitled to be compensated for the loss of the difference out of the sum payable by the Government. But, as a rule, the capitalized value of the *darpatni* were and above the value of his own outgoing would represent the market-value of his *patni* interest. The parties who usually suffer most from lands being taken for government purposes, are either the raiyats with right of occupancy or the holders, whoever they may be of the first permanent interest above the occupying raiyats. The actual occupier is, of course, turned out by the government, and if he is a raiyat with a right of occupancy, he loses the benefit of that right besides being driven possibly to find a holding and a home elsewhere, and the holder of the tenure immediately superior to the occupying raiyats, whatever the nature of his holding may be, looses the rent of the land taken during the period of his holding. These two clauses, therefore, would generally speaking, be entitled to the larger portion of the compensation, and, if the *darpatnidar* in this instance belongs to the latter class, the larger portion of the compensation presumably, to have gone to him."

So also in *Bunwari Lall Chowdhury and others V. Barnomoyi Dasi*[128] where the government took up 2 bighas $2\frac{1}{2}$ cottahs of land for the purpose of a railway in the subdivision of Goalundo in Fureedpore and the Zamindar claimed half the amount of the compensation, but the *patnidar* claimed the whole amount on the ground among others, that there was no condition in the patni *pattah* that they should get an abatement in the *jama* from the Zamindar in the event of any land being taken up by the Government, and the District Judge, upon the general principle laid down in *Gadadhur Dass V. Dhunpat Singh*[129], ordered and decreed that the compensation should be divided equally between the *Zamindar* and the *patnidar*. In the present case we must take it that the *patnidar* is the person to whom the raiyats directly paid their rent. The apportionment between the Zamindar and the patnidar will depend partly on the sum paid as bonus for the *patni* and the relation that it bore to the probable value of the property and partly on the amount of rent payable to the Zamindar and also on the actual proceeds from the cultivating tenants or under-tenants. It may occasionally happen that the Zamindar receives an extremely high bonus and is content with charging with the receipt of a very low rate of rent, or it may be that the bonus is almost nominal and the rent is excessively high, and the Zamindar depends not on the bonus and the interest of the amount so paid and invested in some other way, but on the amount paid periodically as rent, and, consequently as between parties standing in these relations, it is necessary to consider all these matters before any conclusion can be arrived at as to their rights to any particular compensation."

Where again, some land was acquired by Government under the Land Acquisition Act and the *patnidar*, who was precluded, under the terms of the *patni-pattah* for claiming any abatement and continued to pay the same rent. It was *held* that as Zamindar lost nothing, and that, as the pecuniary values of the chance of the patni lease coming to an end by sale or forfeiture was difficult to appreciate, the property was really the property of the *patnidar* being held upon a permanent lease

at a fixed rent, not liable to enhancement and that the *patnidar* was entitled in the circumstances to the whole of the compensation-money (*Biprodas Pal Chowdhury V. Kumar Sanat Chandra Singh*).[130]

Where some land was taken by a railway company (not though the instrumentality of Government whereby the land was taken away altogether from the *patnidar* and the superior landlord and the assests of the Zamindari reduced in consequence) from a *patnidar*, and the *patnidar* received from the railway company compensation of the erection of the Company's works there, it was *held* that this was matter between the *patnidar* and the Company with which the Zamindar, who continued to receive his rent in full had no concern. He was not, therefore, entitled to participate in the compensation received by the patnidar. To say, that the land had suffered some injury, of which the possible consequence might be that, at a sale of the *patni* a difficulty might arise as to finding a purchaser at an adequate price, was a circumstance involving a contingency too remote to be taken into consideration. (*Maharajah of Burdwan V. Wooma Sundari Dassi*).[131]

Now, what about the relative rights of a Zamindar and a patnidar to resume chakeran lands ? Let us first define *Chowkidari Chakeran Lands*. In *Joykrishna Mukherjee V. Collector of East Burdwan*,[132] it was explained that, before the British possession of India Zamindars were entrusted as well with the defence of the territory against foreign enemies as with the administration of law and the maintenance of peace and order within the district, and that they were accustomed to employ not only armed retainers, but also a large force, of *thanadar* or general police-force, and other officers under the names of *chowkidars*, *paiks* and other descriptions as well for the maintenance of order as for the protection of their property, the collection of their revenue and other services personal to them. All these different officers were at that time the servants of the Zamindars, appointed by them and removable by them, and they were remunerated in many cases by grant of land rent-free

or at a low rent in consideration of their services. The lands so granted were called *chakeran* or service lands.

Let us discuss the relative rights over such lands. Section 48 of the village Chowkidari Act of 1870 (Act VI of 1870), held : "All *chowkidari chakeran* lands assigned for benefit of any village in which a *panchayat* shall be appointed, shall be transferred to Zamindar of the estate or tenure in which such lands may be situated." Section 51 of the same Act provided : "Such order shall operate to transfer to such Zamindar the land therein mentioned subject to the amount of assessment therein mentioned, and subject to all contracts theretofore made in respect of, or by virtue of, which any person other than Zamindar may have any right to any land, portion of his estate or tenure, in the place in which the land may be situate." The question sometimes arose whether the effect of the resumption-proceeding under these sections was to create a new title and separate estate in the Zamindar to the benefit of which the *patnidar* had no claim. In *Kasim Sheik V. Prosunno Kumar Mukherjee.*[133], it was *held* that this was the effect, but this view was dissented from in the case of *Kazi Newazkhoda V. Ram Jadu Dey*[134] and it was pointed out that, even if the effect of the resumption-proceedings was to create a "new title" in the Zamindar the rights of the *patnidar* were protected by S. 51 of that Act. The same view was taken in the case of *Purusottam Bose V. Khetro Prosad Bose.*[135]

The main point was the contract or the agreement. In considering the question whether a patnidar was entitled to the resumed *chowkidari chakeran* lands, the Courts must have looked at the contracts between the parties to see what their intention had been. The rule of law was that "unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transfer is then capable of passing, in the property, and in the legal incidents therefore, there was an express reservation, the *patnidar* was entitled to the settlement of the resumed *Chawkidari chakeran* lands. Certain *Chowkidari chakeran* lands were resumed by Government and

transferred to the holders of the Zamindari within which they were situate. Long anterior to this, the whole of the Zamindar, excluding certain portions in *khas* possession of the Zamindar, had been granted in *patni*. The *patnidar* claimed to be entitled to the resumed lands. The Zamindar and the lessee from him resisted the claim on the ground that as, under the *patni* lease, right was reserved to the Zamindar to appoint a chowkidar upon a vacancy arising in the office, the Zamindar was entitled to the lands upon resumption. *Held* that the fact that the Zamindar was entitled to make an appointment to the office of the *chowkidar* did not create in him an interest in the lands held by the *chowkidar* and that such lands upon resumption and transfer to the Zamindar whould pass to the *patnidar* from whose lease they had not been excepted. (*Girish Chandra V. Hem Chanper*).[136]

So also in *Harinarain Mazumdar V. Mukund Lall Mondal*[137] where a *patnidar*, who enjoyed the services of a chowkidar personal to him after the execution of the lease sought to have transferred to him certain *chowkidari chakeran* lands which Government has settled with the Zamindar under Act VI (B.C.) of 1870 and which the Zamindar had sublet to a tenant, it was held on a construction of the lease which extended to the whole of the Zamindari except some *lakhiraj* land, that the *chakeran* lands were a part of the patni and that the *patnidar* was entitled to possession, but not to *khas* possession. Again in *Kaji Newaz Khoda V. Ram Jadu De*,[138] the Zamindar transferred by a 'patni lease' all the lands appertaining to an estate to the *patnidar* for an annual rent. After the execution of the lease, the *patnidar* enjoyed the services of the chowkidar. Subsequently, the collector resumed all the chowkidari chakeran lands situated within the estate under Bengal Act VI of 1870, and transferred them to the Zamindar, who again settled the lands with some tenants. The *patnidar* having brought a suit for recovery of possession of these lands on the ground that he was entitled to them under the terms of his lease, it was *held* that he was entitled to do so.

In *Kumar Bunwari Mukunda Deb Bahadur V. Bidhusudan Thakur*[139], however, it appeared from the lease that the Zamindar appointed and dismissed the chowkidars, and was in enjoyment of their services since the creation of the *patni* and it was *held* that he was entitled to the lands held by the chowkidars after the resumption of such lands by Government, although there was no express stipulation in the lease to that effect. This also was held in *Nitya Nund Hazra V. Maharajidhiraj Bejoy Chand Mahatab.*[140]

In *Pursottum Bose V. Khetra Prasad Bose,* [141] where a contract between the *patnidar* and the *darpatnidars* provided "that the chowkidars shall, when called upon, perform the work of the *mouza* in the same way as they have been performing (such) works from before for the *chawkidari chakeran* lands, but if in the future Government on resuming the said lands settled them, then the patnidar shall have full power to settlement of the fact, and at a matter of life. Government resumed the lands and made a settlement with the Zamindar who in turn settled them with the *patnidar*, and he again with a third person and not with the *darpatnidars*, it was *held* that the *patnidar* had the right to lease the resumed *chakeran* lands to any person he thought fit. He was not bound to settle them with the *darpatnidars*, and that the *darpatnidars* had no right under the the contract to insist upon a settlement of these lands with them.

The principle which determined whether a patnidar was liable to pay additional rent or not when resumed *chowkidari chakeran* lands were settled with him was indicated in the case of *Hari Dass Gosswami V. Nistarini Gupta,*[142] and it was pointed out there that the decision of the question must ultimately depend from the mode in which the rent was assessed at the inception of the *patni.* If, at the time of such assessment, the profits of all the lands, including the *chakeran* lands, were fully taken into account, the Zamindar would clearly have no right to claim any rent in addition to the *patni* rent. If, on the other hand, no rent was assessed at the time in respect of these lands, upon resumption and transfer to the Zamindar, the Zamindar

would be entitled to claim additional rent before the *patnidar* can clain to be put in possession. The additional rent, if payable, must be fair and equitable (*Gopendra Chandra Mitter V. Tara Prosanno Mukherjee*).[143]

The basis on which this additional rent should be calculated was laid down in the case of *Hari Narayan Mozumdar V. Mukunda Lall Mondal,* referred to above. There the *patnidar* contended that he was entitled to have the *chowkidari chakeran* lands transferred to him on payment by him to the Zamindar of what the Zamindar had to pay to the Government, and it was *held* that he was bound to pay such rent for these lands as corresponded to the proportion between the gross collections and *patni* rent formerly payable by him. In *Kazi Newaj V. Ram Jadu Dey,*[144] however, it was *held* that, the *patnidar* was entitled to obtain possession upon his paying to the Zamindar the extra assessment of rent which the Zamindar had to pay to Government. In this case the Zamindar contended that, the addition to the assessment imposed by the collector, the *patnidars* were bound to pay him some additional rent. "It may be conceded", observed Mukherjee, J., "that there is some apparent force in this contention, and that if there were materials on the record corresponding to what were furnished by the parties in the case of *Hari Narain Mazumdar V. Mukunda Lall Mundal,* it might have been necessary to consider whether the *patnidars* were bound to pay any additional rent." In *Gopendra Chandra Mitra V. Taraprosunno Mukherjee,*[145] again, where the rent, as determined by the Collector at the time of resumption, exceeded by Rs. 15 only the rental arrived at on the basis of the principle suggested in the case of *Hari Narain Mozumdar V. Mukunda Lall Mundal,* the former was held to be fair and equitable rent. Finally, in *Ranjit Singh V. Kali Dasi Debi*[146] the judges, in remanding the case of the Lower Appellate Court for deciding the conditions on which the transfer should be made, directed that the principle laid down in *Hari Charan Mazumdar V. Mukunda Lall Mondal* should be followed.

It was noticed that both Zamindar and *patnidar* shared the sale proceeds. It should be noticed, however, that although

the patnidar might be entitled to take a settlement of resumed chowkidari chakeran lands, the Zamindar had still an interest in these lands. This interest, observed Mookerjee, J., in *Hari Dass Gosswami V. Nistarini Gupta*[147] was represented by the rent fairly payable by the *patnidar*, whether that rent was part of the rent already assessed or was payable in addition to that rent. Accordingly, it was *held* in that case that when *chowdhuri chakeran* lands, after resumption and transfer to the Zamindar, were sold for the non-payment of the government assessment, the Zamindar and the *patnidar* were both entitled to share in the surplus sale proceeds, provided the chakeran lands were included within the *patni* grant, and that their respective interest in the sale-proceeds would be calculated according to the proportion which the whole of the *patni* rent bore to the profit of the Zamindar.

Let us discuss the relative rights of raiyats and *patnidars*. It sometimes happened, that on resumption a Zamindar settled the *chowdhuri chakeran* lands with a third person, and the question arose whether the *patnidar*, on recovering possession, could eject him. The general principle to be followed on such cases was laid down by the Full Bench in *Benode Lall Pakrashi V. Kulu Pramanic*.[148] In this case, a person having, previously to the passing of the Bengal Tenancy Act, been settled on certain land as a *raiyat* and a tenant by a tresspasser and having acquired no right of occupancy at the time the suit was brought, was in 1888 sued for ejeetment by the true owner, who had obtained possession of the land from such tresspasser through the Court on the 27th January, 1886. The possession of the land in question for the purpose of cultivating it was acquired by him a good many years ago from the persons who at that time were in actual possession of the Zamindari within which it was situated, and who were then the only persons who could have given possession of the lands of the Zamindari to cultivators. It was not suggested that he did not then obtain possession as a tenant under the *bonafide* belief of the title of his landlords. *Held* that such a person acquired the right of a non-occupancy rayat within the meaning of Sec. 5, Sub. Sec.

(2) of the Bengal Tenancy Act, and was protected from ejectment by that Act provided that it was a right *bona fide* acquired by him from one whom he *bona fide* believed to have the right to let him into possession of the land. So, where a Zamindar has sub-let resumed *chakeran* lands transferred to him by the government, and where the *patnidar* eventually got a decree against the Zamindar for possession, it was *held* that the tenant with whom the lands had been settled by the Zamindar, was entitled to retain actual possession of the lands. (*Hari Narain Mozumdar V. Mukund Lall Mondul.*) But where certain *chowdhuri chakeran* lands were resumed by the government, and made over to the Zamindar-defendants who knew full well that, under the terms of the *patni* lease, the *chakeran* lands were included in the *patni* and that the *patnidar* (plaintiff) was only to pay additional revenue that might be imposed by Government by resumption and settlement with him, *malafide* allowed the tenant-defendants to remain on the lands and accepted rent from them, it was *held* that the plaintiff was entitled to obtain possession by ejecting the tenant-defendants (*Upendra Narain Bhattacharj V. Pratap Chandra Pradhan*).[149]

In distinguishing this case from the case of *Hari Narain Mozumdar V. Mukund Lall Mondul* referred to above and the case of *Benode Lall Pakrashi V. Kalu Pramanik*, the Court observed : "In that case (*Harinarayan V. Mukundalal*) the Zamindar-defendant seems to have been put in actual possession of the lands by Government and, while in that position, to have let the lands to the tenant-defendants. The plaintiff in that suit did not at first come to terms with him. In the course of that suit it was settled on what terms the plaintiff was to obtain possession of the land, and, when that was done, it was too late to turn out the tenant-defendants for they had been accepted as tenants by the *de facto* landlord. The case is quite different in the present suit. The Zamindar-defendant seems to have accepted the tenant-defendants as his tenants and to have taken rent from them *malafide*. It has been found by both courts that he had no right to do this under the terms of the *pattah* he had granted to the *patnidar*, against whom he had no

further claim and of which terms he must have been well aware. The tenant-defendants may have acted *bona fide* but the Zamindar did not.....In *Binad Pakrashi's* case and the cases in which it has been followed, the *de facto* Zamindar 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. Hence they were held to have acquired status of tenants. But it never was intended to be laid down that a person, knowing that he had no title could induct person, into 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."

These cases were decided on the basis that the *Chowdhury Chakeran* lands were raiyati lands. A different view was taken in the case of *Jonab Ali V. Rakibuddin Mallik.*[150] In that case J. Harrington was of opinion that such lands, when they were resumed under Act VI of 1870 (B.C.) and transferred to the Zamindar, become his *Zerait* land. Mukherjee, J., however, *held* that "the correct view of the matter is that, upon transfer, they are at the disposal of the Zamindar to be dealt with by him as *mal* or *zerait* at his opinion. "But whether they were to be considered as *mal* lands or as *zerait*, both the judges agreed in holding that a tenant, taking settlement of them *bona fide* from a trespasser did not acquire the rights of an occupancy or a non-occupancy raiyat, could, therefore, be ejected. "The question", observed Mukherjee, J., "arises whether a raiyat, who has obtained a settlement of resumed *chowdhuri chakeran* land from a person other than the Zamindar legally entitled thereto, can successfully claim to have acquired a *raiyati* interest in it as against the true Zamindar. In my opinion, the question ought to be answered in the negative. The only authority which has been relied upon by the learned vakil for the appellant in support of the contrary view,

viz, the case of *Binod Lall Pakrashi V. Kalu Pramanik* is clearly distinguishable. It was no doubt held in that case that, if a tenant *bona fide* acquires a right to hold land for the purpose of cultivating it from a trespasser whom he *bona fide* believed to have a right to let him into possession, acquires the status of a raiyat within the meaning of Sec. 5, Cl. (2) of the Bengal Tenancy Act. It is manifest, however, from the Judgement delivered by Petheram, C. J., that the lands in question in that case were the *raiyati* lands of the Zamindari. In my opinion, it would be an unwarrantable extension of the doctrine which underlies that case, if I were to apply it to lands other than *mal* lands. I think there is between the two cases a substantial distinction well-founded on principle; in the case of *mal* lands they have to be let out to tenants and various statutory rights may be acquired therein; in the case of *Zerait* lands, they belong primarily to the proprietors and, even if they are let out to tenants, the growth of statutory rights is circumscribed within very narrow limits. Besides, I cannot discover any intelligible principle upon which the trespasser may be taken to have authority to impress uopn upon resumed *chakeran* lands a particular character, which can be determined at the choice of the true owner alone. I am not prepared to assent to any extension of the rule laid down in *Binod Lal V. Kalu Pramanik*." The same view was taken in the case of *Kazi Newah Khoda V. Ramjadu Dey.*[151] Where, therefore, *Chowkidari chakeran* lands have been resumed and transferred by the collector to the Zamindar, the interest of the *chowkidar* in those lands and along with it, all rights created by him in favour of others ceased (*Krishna Kinkar Dutta V. Mahanto Bhagwan Dass.*[152]

Could a *patnidar* resume Lakhiraj Land? In considering this point, the question as to whether a lakhiraj was created before or after 1790 was of some importance. Sec. 6, Reg. XIX of 1793, conferred the power of resuming grants not exceeding 100 bighas, alienated *before* 1790 on the person responsible for the discharge of the revenue of the estate or dependent taluk (such dependent taluks no doubt were

referred to in Sec. 6 Reg. VIII of 1793) in which the land may be situate, and, as there was nothing in Reg. VIII of 1819 to show that the creation of a *patni* (which was spoken of as a "tenure") was a transfer of Zamindar's proprietory rights (ref. Sections 10, 11, Regulation I of 1793), and the Zamindar usually remained responsible for the payment of the land revenue, it might well be contended that the Zamindar, being the person for the revenue could alone sue to resume these grants, which, as having been expressly excluded from the settlement, could not be supposed to be included in any lease of the *mal* lands. This view was taken by the High Court in the case of *Obhoy Ram Jana V. Syed Mohomed Hossein.*[153] There a Zamindar sued to resume a piece of *lakhiraj* land which had been in existence since before 1790 and it was objected that as he had given his property in *patni* to a third party, he had no right of action. The Court, however, decided that Zamindar who granted his estate in *patni* had still such an interest in the property as entitled him to challenge the right of another who asserted to hold it adversely to him on a lakhiraj title, for the proprietory title was in him and whatever was to the injury of his proprietory title was a valid cause of action to him.

With respect to grants made after 1790, though Sec. 10 Reg. XIX of 1793, expressly authorised the person possessed of the proprietory right to disposses the grantees and collect rent, yet as the *patnidar* was beyond controversy an assignee of so such of the proprietory right as entitled to collect rents, and as moreover, these grants were included in the *mal* at the time of the Decennial Settlement, it would seem that the right of resumption here belonged to the *patnidar*. In the case of *Gya Ram Mandal V. Gya Ram Naik,*[154] a *patnidar* sued under Sec. 30, Regulation II of 1819, to resume an alleged *lakhiraj* tenure situate within his *patni*. It was objected that he had filed no title-deeds showing that a power to resume had expressly been given to him, but the court *held* that every right which the Zamindar could himself exercise passed to the patnidar, and that it was for the defendant, who objected

to the exercise by the *patnidar* of an ordinary legal right incidental to his tenure, to give some *prima faci* evidence as to the ground on which the objection was founded before the plaintiff could be called upon to produce his title-deeds. So also in *Soshi Bhuson Bakshi V. Mahamed Matain,*[155] it was *held* that when a purchaser at a *patni* sale proved his purchase and on his applying for possession, was resisted by persons holding lands included within the ambit of the *patni* tenure, who set up the defence that the lands held by them were lakheraj and not *mal*, it was for the defendant, to prove that the lands have been held not under the patni tenure but as lakhiraj.

Where a defendant pleaded a *patni* tenure the onus of proof lied on him in the first instance. But when he could prove by credible evidence the creation by the plaintiff of an inferior tenure entitling him to hold the estate, he had discharged the burden and it then lied on the plaintiffs to displace or explain away that evidence. (*Upendra Narain Ghosh V. Bajpayee Rajah Keshub Chunder Deb and others.*)[156]

In *Dhunpal Singh Doogur Roy Bahadur V. Sheik Jowahurally,*[157] where the plaintiff, the Zamindar sued the defendant, the *patnidar*, to recover possession of a village, Abdoolahnagar, on the allegation that the village was not included in the *patni* lease, and where the defendant appeared to have objected at the time of the execution of the *pattah* that no express mention of the village had been made in it, but that the plaintiffs' agent satisfied his scruples by declaring that the village held in farm by one Rahamatalleh (which included the village Ahmadnagar) was given in *patni* to him, parol evidence was held admissible to explain the deed of lease, the Judges remarking :—"Evidence of every material fact, which will enable the Court to ascertain the nature and extent of the subject matter of the *pattah*, or, in other words, to identify the things to which the instrument refers, is in our opinion admissible. The acts of the parties also may be explained by parol evidence." A gave a *patni* lease to B, which was not registered, and subsequently gave another *patni* lease of the same land to C, which was duly registered,

under the provisions of Act. XVI of 1864. B sued to compel A to register his lease and set aside the subsequeut lease granted to C. *Held, inter alia,* that, the lease being inadmissible in evidence in consequence of non-registration its existence could not be proved by parol evidence (*Monmohini Dassi and others V. Mosst. Bishen Moye Dassi*).[158]

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CHAPTER V

SALES OF PATNI RIGHTS-I

We have discussed earlier that by the Regulation VIII of 1819 means were afforded to the Zamindars for recovering arrears of rent from their patnidars and these means were almost identical with those by which the demands of Government revenue were enforced against the Zamindars themselves. Patni sales regulations and judgements thereupon became the keystone, in fact, the relation between the Zamindars and patnidars were well regulated mostly by these rules. Law and judicial pronouncements on court cases would exhibit their reciprocal relationship as also the basis of cohesion and conflict. Section eight onwards of the Regulation VIII contained the rules regarding the method of sale of the defaulting patnis. The section stated as follows : "8. First, Zamindars, that is proprietors, under direct engagements with the Government, shall be entitled to apply in the manner following for periodical sale of any tenures upon which the right of selling or bringing to sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged on the creation of the tenure. The exercise of this power shall not be confined to cases in which the stipulation for sale may have been unrestricted in regard to time, but shall apply equally to tenures held under engagements stipulating merely for a sale at the end of the year, in conformity with the practice heretofore allowed by the Regulation in force.

Second—On the 1st day of Baisakh, that is, at the commencement of the following year from that of which the rent is due, the Zamindar shall present a petition to the collector, containing a specification of any balances that may be due to him on account of the expired year from all or any *talukdars* or other holders of an interest of the nature described in the preceding clause of this Section. The same shall then be stuck up in some

conspicuous part of the *Cutcherry* with a notice that, if the amount claimed be not paid before the first of Jeyt following, the tenures of the defaulters will on that day be sold by public sale in liquidation. Should, however, the first of Jeyt fall on a Sunday or holidays the next subsequent day, not a holyday, shall be selected instead ; a similar notice shall be stuck up at the sadar *Cutcherry* of the Zamindar himself, and a copy or extract of such part of the notice as may apply to the individual case shall be by him sent to be similarly published at the *cutcherry*, or at the principal town or village, upon the land of the defaulter. The Zamindar shall be excludisely answerable for the observance of the forms above prescribed, and the notice required to be sent into the moffussil shall be served by a single peon, who shall bring back the receipt of the defaulter, or of his manager, for the same ; or, in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot. If it shall appear from the tenor of the receipt or attestation in question that the notice has been published at any time previous to the fifteenth of the month of Baisakh, it shall be a sufficient warrant for the sale to proceed upon the day appointed. In case the people of the village should object or refuse to sign their names in attestation, the peon shall go to the *Cutcherry* of the nearest Munsiff, or if there should be no Munsiff, to the nearest thana, and there make voluntary oath of the same having been duly published ; certificate to which effect shall be signed and sealed by the said officers and delivered to the peon.

Third—On the last day of Kartik, in the middle of the year, the Zamindar shall be at liberty to present a similar petition with a statement of any balances that may be due on account of the rent of the current year upto the end of the month of Asin, and to cause similar publication to be made of a sale of the tenures of defaulters to take place on the 1st of Aghan, unless the whole of the advertised balance shall be paid before the date in question, or so much of it as shall reduce the arrear, including any intermediate demand for the month of Kartik, to

less than one-fourth, or a four anna proportion, of the total demand of the Zamindar, according to the *Kistbandi.* Calculated from the commencement of the year to the last day of Kartik."

There were two classes of transferable tenures., viz., (i) tenures transferable by the title deeds ; (2) tenures transferable by the established usage of the country. The above section i.e. Section 8 of Regulation VIII of 1819 speaks of the first class only, viz., tenures upon which the right of selling or bringing to sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged on the creation of the tenure, 'and a sale of tenures of this class, when made under the Regulation (VIII of 1819) conveyed the tenure free of all incumbrances that accrued upon it by the act of the defaulter (S. ii). In case of a sale of a tenure of this class made otherwise then under the Regulation this result did not follow, for Cl. 7, S 15 Regulation VII of 1799, did not declare that a sale should have this effect and there was no other Regulation which did. The anomaly was, however, remedied by Regulation I of 1820 which enacted that tenures of the nature defined in Cl I, Sec. 8 Reg. VIII of 1819, i.e., tenures of the first of the above classes when brought to sale under any summary process authorised by the Regulation, should be sold in the mode prescribed by Regulation VIII of the periodical sales allowed thereby. Clause 2 of Section 2 further made applicable to all such sales the rules of Sections 9, ii (voidance of incumbrances by sale), 13, 15 and 17. The result was that after the passing of Regulation I of 1820, whenever a sale of a tenure of the first of the above classes took place for arrears of rent, whether such sale was made under the provisions of Sec. 8, Regulation VIII of 1819, or under any summary process authorized by the Regulation, the sale resulted in the tenure free from all incumbrances which had accrued by the act of the defaulters, with the exception of those mentioned in Cl. 3, S ii, Regulation VIII of 1819, 'in the case of the Second class of tenures, however, i.e., tenures transferable by the established usage of the country, a sale

have no such effect until the passing of Act VIII (B.C.) of 1865.'[1]

It has been *held* in *Durga Prosad Bandopadhyay V. Brindaban Rai*[2] that the provisions of the Bengal Tenancy Act (VIII of 1885), so far as they do not interfere with the patni law in respect of the *patni* tenures, apply to them. Consequently, the landlords of *patni taluks* may also sell them under the provisions of chapter XIV of the Bengal Tenancy Act (VIII of 1885), in execution of decrees for arrears of rent, if they choose to.

It might be remembered that the *proceedings on an application for the sale of a tenure was analogous to the remedy by distress.* An application for the sale of a tenure, where a right of sale has been specially reserved, in order that the applicant may, out of the proceeds of the sale, realize his rent is something quite distinct from a suit. The investigation which may be demanded by the *patnidar* under Cl. 1. S. 14, is, no doubt, a summary suit. But the sale is not to be stayed till that suit is decided. The proceedings on the petition of the Zamindar to bring the estate to sale are mere analogous to the remedy by distress than to a suit (*Kristo Mohan Shaha V. Aftaboodeen Mahamed*).[3]

When a property mentioned in the schedule of the Nawab Nazims's Debt Act (XVII of 1873) was applied to be sold under the *patni sale* law by the superior landlord (*Raja Ruknee Bellav*). The Nawab Nazim's son and representatives, the Nawab of Murshidabad, took objection to the application, saying that under the Nawab Nazim's Debt Act, the property could not be sold by the collector without the previous sanction of the Governor-General in Council. The objection prevailed before the collector of Murshidabad and before the Presidency commissioner, but the receiver Mr Belchambers, on behalf of the estate of Raja Ruknee Ballav, moved the Board of Revenue who decided, on the advice of the Legal Remembrancer, that the Nawab Nazim's Debt Act was a purely a personal enactment and that, therefore, the objection made by the Nawab of Murshidabad as to the property being sold under the patni sale law was not valid.[4]

Either the proprietor or proprietors jointly or their common manager must apply for sale. The Regulation contemplates the sale of *patni* by the proprietor of an entire estate. Consequently, either a recorded Zamindar, or Zamindars jointly or a common manager whose name was duly registered may only make the application.

A co-proprietor or a co-sharer has no such right, unless the *patni* is co-extensive with his own interests. Even if, subsequent to the creation of the *patni* by a number of Zamindars jointly, the patnidar pays his rent to each of them separately according to their shares, they are not entitled to apply individually. A person who had purchased a six-anna share of a Zamindari estate and let it out in *patni* applied for the sale of the *patni* tenure for arrear of rent in accordance with the stipulation in the *kabulyats*. The collector after holding a summary enquiry, declined to sell on the ground that the petitioner was a sharer and that therefore, the tenure could not be sold unless the other Zamindars in the share joined him. The Commissioner dismissed the appeal against the collector's proceedings. The Board, on appeal, held that the orders passed by the local authorities were corrects.[5] But if the several fractional Zamindars and the *patnidar* enter into separte engagements by executing leases and counterparts, the right of each proprietor may be recognised by the collector. The question whether fractional portions of *patni taluks* can be sold under the provisions of the Regulations was refearred to the Legal Remembrancer, who held that a fractional portion could not be sold unless there was a distinct stipulation to that effect in the engagement interchanged at the creation of a *patni* tenure. Where, however, an estate is held in *patni* from more then one Zamindar under different deeds, each deed may be held to have created a separate *patni* and may be sold without reference to the tenures of the other fractional portions of the parent estate.[6]

It should be observed that, although it was the Zamindars of entire estates only who had a right to bring *patni* tenures to sale, the general law as to the rights of co-sharers was none the less applicable. Registration of name under Act VII, of

1876, was of course, absolutely necessary before any relief could be sought by a proprietor under the *patni* regulation. Observed that this relief could be sought only by the Zamindar against the *patnidar* and not by any other person other than the Zamindar. A, a Zamindar, purchased by private sale a *pargana*, of which some villages had already been let in *patni* by the former Zamindars, and the other villages were in *khas* possession. He executed a deed by which he created, in favour of B, a *patni talnk* of the villages in *khas* possession, and by the same instrument he gave B a *sarbarakari* lease of all the *patni mahals* previously created. The deed reserved certain rents and declared that the two interests thus created should be inseparable, and that B should have no power to transfer the one without the other. But it was declared that the whole united interest was transferable, and that on any default being made by B in payment of the reserved rent, B's interest should be liable to sale under this Regulation. On B's applying to bring the *patni* tenures to sale for arrears, the collector held that B could not do so, as he was neither the authorised agent of A nor was he (B) the Zamindar. Zamindar alone was entitled to take steps under the Regulation. The Board on appeal, *held* that, under this Section, no other person than the Zamindar, as defined in this Regulation, can exercise the right of causing a *patni* tenure to be sold. In the proceedings the Zamindar (subject to the ordinary rights and obligations of principal agent) may be represented by an agent acting on his behalf, but by no one else. But as B did not profess to have been authorised to act as such agent on behalf of the Zamindar, but claimed to be vested with the right of causing such tenures to be sold on his (B's) own behalf, the Zamindar having divested himself of his rights in that respect and transferred them to B, the appeal was rejected. It was observed that the right in question is inherent in the position of Zamindar and cannot be exercised againts the *patni* by any person other than the Zamindar.[7]

Every application, under Section 8, Regulation VIII of 1819, should be referred on receipt to the record-keeper for report,

and it should be acted upon only if the record-keeper reports that the applicant is the recorded proprietor of the estate.

Now, whom should the Zamindar proceed against ?

Where a Zamindar brought a *patni* to sale for arrears of rent without recognizing all the co-sharers of the *patni*, it was *held* that, where an arrears of rent was due, the Zamindar, in applying to the collector to bring the property to sale, need not recognise any one except the registered *patnidar*, and that the mere fact that, in the application to the collector, he did mention the names of one or two of parties in possession, though not registered in the Zamindari books and omitted to mention the names of others, did not in any way vitiate the sale or render the proceedings invalid (*Raghab Chunder V. Brojo Nath*).[8] So also in *Rajnarain Mitra V. Ananta Lall Mundal*[9] where two of the recorded *patnidars* were dead before proceedings under the Regulation to set aside a *patni* sale were taken, it was *held* that fact was immaterial and that the proceeding were not illegal by reason of their having been directed against dead person : Proceedings under the *patni* Regulation taken for the realization of arrears of *patni* rent were, it was observed, not taken against persons at all but against the *tenure*. The Zaminder was, therefore, quite right in setting out in his petition and notices the name of the *patni* and the names of the *patnidars* as recorded in his books.

For bringing the *patni* to sale to whom the application had to be made ? Zamindars in applying for sales of *patni* tenures for arrears of rent were required to present a petition to the civil court of the district and a similar one to the collector; but on the passing of Regulation VII of 1832, no petition was made in several cases to the Civil Court, and the Sadar Court ruled in 1849 that both petitions were still necessary, notwithstanding the transfer of the duties immediately connected with the sales themselves from the Judge to the Collector. To legalise past sales, Act. XXXIII of 1850 was passed under which one petition only to the Collector is deemed sufficient.[10] Although Section 16, Regulation VII of 1832, by which the power of holding *patni* sales was transferred from the Civil Court to the

Collector, has been repeated by Act X of 1861, the power to order sales is still vested in the revenue officers under Act XXXIII of 1850, provided all the preliminaries under Clause 2 of the Section have been observed.[11] There was, however, some doubt as to the exact effect of the repeal of Section 16, Regulation VII of 1832. This doubt was set at rest by Act VIII of 1865, Sec.3 of which lays down that the sale for the recovery of arrears of rent of patni taluks and other saleable under-tenures of the nature defined in Clause 1, Sec.8 of Reg. VIII of 1819 shall be conducted by the Collector of Land Revenue in whose jurisdiction the land lay.

One petition only need be presented for the sale of any or all of the tenures, described in Section 8, Clause 1, Regulation VIII of 1819, contained in one estate. These sales are conducted by the Collector of land revenue under Section 3, Act VIII of 1865.[12]

A reference was made to the Board by a Commissioner as to whether in a district, where both the *Amli* and *Fasli* years are used, it is legal to advertise *patni taluks* for sale on the 1st of *Aswin* and *Cheyt*, instead of the 1st Bysack and Kartik in those parganas when the Fasli era is current. The Board after enquiring what months were mentioned in the patni engagements of the district and what the practice had been as to the time of sale since the passing of the Regulation, ruled that reading the preamble in connection with Cl. 2 of S. 8 of Regulation VIII of 1819, as it was clearly the intent of the law that sales of *patni taluks* should be held at the beginning and middle of the year, so in a district, where the *Fasli* year prevails, the selling at the beginning and middle of the *Fasli* years is within the meaning of the law..[13] The same view has been taken by the High Court. In *Pitambar Panda V. Damodar Dass*[14] Pontifex, J., observed :—"We are of opinion that the essential words in Cl. 2, Section 8 of the Regulation are the words 'at the commencement of the following year', and that those words may be ready with reference to Regulation VII of 1799, S. 15 Cl. 7, which is referred to in the first Section of Regulation VIII of 1819 by the words, 'instead of only at the end of

the Bengal year as heretofore allowed by the Regulation in force'. The Regulation of 1799 expressly mentions the Bengal, *Fusli* and *Velaity* years, and authorises an application for sale to the Dewany Adalut at the commencement of the ensuing year·····We are of opinion that the intention of the Regulation was to lay down a uniform practice in each locality. That uniformity was the essential requirement and the particular date only for enforcing regularity, and that practice which has been established for a course of years, and which can cause no substantial detriment to any of the parties concerned, and which is reasonable and convenient in itself, is not liable to objection on a mere point of form. We observe that in a letter on the record from the Secretary to the Board of Revenue to the Revenue Commissioner of Cuttack, dated 25th July, 1840, it is laid down that in a district where the *Fusli* year prevails the practice which, it appears, has universally obtained of selling at the beginning and the middle of *Fusli* year is within the meaning of the law.' We are of opinion that this is the reasonable interpretation of the Regulation." Nor was it necessary that the petition should be presented on the precise date mentioned. In *Ashanullah Khan Bahadur V. Hari Charan Mazumdar*[15], it was *held* that the non-presentation of the petition on the precise date (1st Kartik) specified in Cl. 8, S 8, is not a substantial process to be observed by the Zamindar previous to a sale for arrears of rent and affords no ground for setting aside the sale, the portion of the Section being merely directory. If the 1st *Bysak* or the 1st of *Kartik* fall on a Sunday or other close holiday, the petitions must be presented on the first succeeding day on which the office is open.[16]

Now, what should the petition contain ? The petition due to the Zamindar on account of the expired year from all or any *talukdars* or other holders of an interest of the nature described in Cl. I of this Section. Where, therefore, a settlement was made by a lease, which included certain *jote jamas* as well as certain *patni taluks* and reserved an aggregate rent for the whole without apportioning any portion of rent to the *jote*

jamas as distinguished from the *patni taluks*, it was *held*, as the landlord would not be able to comply with one of the conditions precedent to a sale under the Regulation contained in S. 8, viz. to specify howmuch of the arrear was attributable to the *jote jamas* and how much to the *patni taluks* because the rent was on aggregate rent both for the *patni taluks* and for the *jote jamas*, Regulation VIII of 1819 could not apply to the Settlement, and that the *patni taluks* could not be sold under the provisions of that Regulations in spite of the fact that the parties contracted that the Regulation should apply (*Hayes V. Rudranund Thakur*).[17]

The Board laid it down as an instruction to all Commissioners and Collectors that the practice which has hitherto generally prevalled of including interest and cesses in the petitions filed under this section should be allowed to continue. The recovery of these demands under the Regulation must be held to be admissible by the Revenue Authorities, unless and until the Civil Court decides otherwise. This order was circulated with the Board's Memo No. 838½ A, dated the 15th November, 1901.[18]

What should the notices under contain ? It is observed that the notice required by Cl. 2, Sec. 8 ought to state that, if the full amount due and specified in the notice be not paid before the date therein mentioned, the tenure of the defaulter will be sold by public sale. In order to have that notice in proper form, it must contain not only a specification of the arrears, but a notification that the sale will proceed unless payment of the rent be made within the time mentioned. In the case of the notice under Clause 3, it must be stated clearly that the sale might be stayed by payment of so much as would reduce the arrears to a quarter of the total demand of the Zamindar. A notice under Cl. 3 which contained a distinct statement that the sale would take place, unless the whole of the balance was paid, as if the Zamindar was proceeding under Cl. 2 was held to be a bad notice and a noncompliance with a substantial requirement of the Regulation, such as to justify the reversal of the sale. (*Ashanulla Khan V. Hari Charan*

Mozumdar),[19] "The object of the publication of this notice," observed the Judges in this case, 'is to give not only to the defaulting *patnidars*, but also to *darpatnidars*, mortgages and other incumbrancers, notice of the sale. It may well be that the *patnidars*, *darpatnidars*, *mortgages* of other incumbrancers would have available, for the purpose of saving the estate from sale, 75 per cent of the arrears due, but not the whole. We are of opinion that, if the Zamindar wishes to bring into operation the provisions of Cl. 3 S. 8, and to get a half year's rent by means of this Regulation, he must strictly comply with the conditions laid down in the Section. We think all the requirements in Cl. 2 of S. 8 must be imported into Cl. 3 of that Section *mutatis mutandis*, and therefore we think that the serving of the notice is a condition precedent to the sale being held, and that the notice so served must be a good notice, that is to say, it must be a notice which shall put all parties concerned in saving the tenure from sale in possession of the knowledge of what really they will have to do if they desire to save the tenure, and would be purchasers in possession of information as to the amount they will have to spend if they wish to purchase the property.' This case went on appeal to the Privy Council, and their Lordships, while confirming the decision of the High Court, observed that the objection to the notice being defective, which was fatal to the whole proceedings and appeared on the fact of it, may be competently raised for the first time in the Appellate Court (I. L. R., 20 Cal., 86). The notice in both cases should also specify the lots which should be called up successively for sale. Where the notice contained no such order, i.e. if it does not specify lots it was *held* not to be in proper form (*Bejoy Chand Mahatab V. Atulya Chandra Bose*).[20]

The publication of the petition to the Collector, containing a specification of the balance of rent due, by sticking it up in some conspicuous part of the cutcherry as required by Cl. 2, S. 8 of the Regulation, was not a substantial process to be observed by the Zamindar previous to a sale for arrears of rent; non-compliance with the provision, therefore, was not a

ground for setting aside the sale. No injury could result to the *patnidar* or any one holding under him by the nonpublication of this petition, which was only a method prescribed by the Regulation for putting the executive machinery in force (*Ashanulla Khan Bahadur V. Hari Charan Mozumdar*).[21] It can be observed, however, that the original petition and the original notice must be stuck up and published. In *Bejoy Chand Mahatab V. Atulya Chandra Bose*[22], where certified copies of the petition and the notice were stuck up instead of the original ones, this was *held* to be a material irregularity vitiating the sale.

Publications of notices of sale were essential for its validity. Publication of the notice of sale under clauses 2 and 3 intimating that, if the amount claimed be not paid before the 1st of *Jayte* or the 1st of *Aughan* following, the tenure of the defaulter will be sold by public auction was, however, a condition precedent to the sale of a patni for arrears. If a *patni* was sold without such notice, the sale was informal and could be set aside, the bonafides of the purchaser notwithstanding. (*Moborak Ali V. Amir Ali*).[23] "The petition, it is true," observed Petheram, C.J. in *Rajnarain Mitter V. Ananta Lal Mandal*,[24] 'does not affect the purchaser, or intending purchaser, in any way, but the notice does. The notice is a notice of what lots are to be sold, and when the sale takes place it is upon that notice that the lots are sold and it shows the order in which the lots will be sold, and is the very thing which the public ought to have access to, and which the public ought to be in a position to see.'

On the application to the Collector being admitted, the notice of sale had to be published at three places, viz., (1) at some conspicuous part of the Collector's Cutcherry; (2) at the Sudder Cutcherry of the Zamindar himself; and (3) at the Cutcherry, or at the principal town or village upon the land, of the defaulter. The first two notices may be general ones containing the names of more than one defaulter, the third is a special one for the individual.

The original petition and the original notice must be stuck up and published. In *Bejoy Chand Mahtab V. Atulya Chandra*

Bose[25], certified copies of the petition and the notice were stuck up instead of the original ones, and this was held to be a material irregularity vitiating the sale. "Having regard to the provisions of the Second Clause of S. 8," it was observed, 'it was the original petition and the original notice which ought to have been stuck up, for S. 10 of the Regulation says that, at the time of the sale, 'the notice previously stuck up in the cutcherry shall be taken down' apparently meaning the notice stuck up in some conspicuous part of the cutcherry as provided in S. 8, which means the notice itself and not a copy of it.' It must be stuck up on some conspicuous part of the Collector's Cutcherry and of the Zamindar's cutcherry or the sale will be set aside (*Baikantha Nath V. Mahatab Chand*).[26] In *Rajnarain Mitter V. Ananta Lal Mandal*[27], where a notice of sale, instead of being stuck up and published in some conspicuous part of the Collector's Cutcherry as required by law, was in accordance with the practice which prevailed during the incumbency of the Nazir of the Collector's Cutcherry at Suri and of his predecessors in office, kept by the Nazir with other petitions for sale and notices relating to them in bundles which were at night locked up for safe custody and in the day time kept in the conspicuous place near his seat at the entrance to the cutcherry, any person who chose to ask for it and wished to see it being at liberty to inspect the whole it was held [per Petheram C. J. and Ghosh, J. (Tottenhem, J. dissenting)] that this was not a publication of the notice within the meaning of Cl. 2. S. 8, of Regulation and that it was a 'sufficient plea' for the defaulting *patnidars* within the meaning of S. 14 to have the sale set aside. Petheram. C. J. observed, 'As it seems to me, the meaning of that (i. e., the direction given in Cl. 2 S.8) is that the petition and the notice are to be advertised, and as to that it is material to notice that in S. 10 of the same Regulation the word "advertise" is actually used which strongly confirms my views that the meaning of sticking up in a conspicuous part of the 'cutcherry' is that it is to be advertised in the ordinary acceptance of the word. Now 'advertise' in the ordinary acceptance of the word, means placing it in such a position that

persons who have to use the place for their ordinary business may see it. It is clear that if the petition is put in such a place that only those who ask for it may see it, it is not advertised in any sense whatever.....It seems to me that when one has come to the conclusion that this notice was published or advertised in the Collector's Cutcherry, the Judgement of the Privy Council in the case of *Maharaja of Burdwan V. Tara Sundari Debi*[28] concludes the matter, because they say that this is to be strictly complied with, and they point out that the Zamindar is to be exclusively responsible for the strict performance of it. One argument which has been pressed before me is that the Zamindar is responsible for what takes place in the mofussil, but is not responsible for what takes place in the Collector's Cutcherry. I think that argument cannot be sustained.'

Section 10 of Regulation VIII of 1819 would seem to imply that the notice was to remain till it was taken down at the time of the sale. When the notice and the petition were stuck up every day at 10 A.M. and taken down at 5 P.M. and they were not stuck up at all on Sundays, it was *held* that the procedure was not justified by the Regulation (*Bejoy Chand V. Atulya*).[29] This view had, however, been dissented from in the case of *Sachi Nandan Datta V. Maharaj Bijoy Chand Mahatab Bahadur*[30], where in a suit to set aside a sale held under the Patni Regulation, it was found that the notices had been stuck up in the Collector's Office Board outside the Court from 10 A.M. to 5 P.M. and had not been put up at all on Sundays, and it was decided that this was a sufficient compliance with the Regulation. The case of *Bijoy Chand Mahatab V. Atulya Charan Bose*[31] was referred to in this case and the judges observed : "The head-note of the report is misleading, as it transposes the order of the remarks made by the learned Chief Justice and suggests that it is laid down as a definite finding that the procedure was not justified by the Regulation. That is not the view we take of the passage. The decision of that case turned on other irregularities which were held by the learned Chief Justice to be in contravention of the terms of the Regulation

and to afford sufficient grounds for setting aside a sale. The passage at the end of the judgement does not amount to a distinct finding of any irregularity in consequence of which the sale was set aside ; but it is clearly an expression of opinion by way of *obiter dictum* as to what might possibly be the effect of the failure to keep the notice stuck up on the Collector's notice board after office-hours. We do not think, therefore, that we should take that expression of opinion as binding on ourselves in this case, and we think that the procedure that was followed, namely, sticking out these notices during office-hours was a sufficient compliance with the terms of the Regulation." The notice must be stuck up, upto the date of the sale. Where the notice was stuck up only till the 14th May, although the sale did not take place until the 15th, it was *held* to be in contravention of S. 10 of the Regulation (*Bejoy Chand V. Atulya*)[32].

It is essential to the validity of a sale, held under Regulation VIII of 1819, of a *patni* estate for arrears of rent that the notices of sale prescribed by Cl. 2, Sec. 8, should be duly and regularly published as therein directed (*Baikantha Nath V. Mahatab Chand*). In Cl. 2, the word "Similarly Published" meant that the notice was to be stuck up, as appeared for the previous words of the Section, in the Cutcherry, or if there be no Cutcherry, in the principal town or village upon the land, of the defaulter (*Raghab Chandra Banerjee V. Brojo Nath Kundu Chowdhury*)[34]. A Zamindar brought a *patni* to sale for arrears of rent. His peon, who could neither read nor write, went to the village and finding that there was no cutcherry there and that the *gomastha* was absent, opened the notice given to him and showed it to 5 or 6 people who were sitting there' none of whom could read or write. He then proceeded to the Thana, and obtained from the Head Constable a certificate on the back of the said document to the effect that he made such a statement of the publication of the notice. *Held* that the publication of the notice was not such as it required by law : The notice would be stuck up in the Cutcherry, or, if there be no Cutcherry, in some conspicuous part of the

principal village upon the land of the defaulter, the object of the notice being not merely to give information to parties wishing to purchase, but to give information to the defaulter also that, unless the arrears be paid by a certain day, the property will be sold (*Raghub Chandra Banerjee V. Brojo Nath Kundu Chowdhury*).[35]

Personal service of the notice was not a sufficient compliance with the provisions of Cl. 2. S. 8 of the Regulation. In *Gouri Lall Singh V. Judisthir Hazra*[36] which was a suit brought to set aside a *patni* sale under Regulation VIII of 1819 it was proved that the notice of sale was stuck up first in the cutcherry of the *ijaradar* (the *mahal* having been let out in *ijara* by the *patnidar*), and, on the refusal of the *ijaradar's gomastha* to give a receipt of service, it was taken down and subsequently personally served on the defaulting *patnidar* at his house, which was at some distance from the *patni mahal*, and it was *held* that, though the provision of Regulation VIII of 1819 had been strictly complied with, yet as the plaintiff (the *patnidar*) did not allege that in consequence of the defective publication, there was not a sufficient gathering of intending purchasers, nor that the under-tenants were ignorant of the sale and were prejudiced by such ignorance, nor that the *mahal* was sold below its value, the defect did not amount to a "sufficient plea" under Section 14 for setting aside the sale.

The decision, however. has been overruled by subsequent cases. In *Govindo Lall V. Chand Haree*,[37] it was *held* that Cl. 2 S. 8 of Regulation VIII of 1819, which porvided that a notice of sale under the Regulation shall be stuck up in the cutcherry of the Zamindar, was not complied with by serving it upon the defaulter himself or his agent. The object of the Regulation was to make known to the holders of under-tenures and raiyats and the residents of the place that the *patni* would be sold if the arrears were not paid off within the time specified, and if the notice was not stuck up in the cutcherry, as prescribed by the Regulation, there was such a material irregularity in the publication as would avoid the sale. "If the notice only intended," observed the judges, 'to convey private intimation to

the defaulter or his agent, the law would have hardly used the word 'publication'. To publish, in our opinion, is to make public i.e., to convey information to the public or all whom it may conecrn.'

In Mahammad Zomin V. Abdul Hakim[38] again where the plaintiff who was defaulting *patnidar*, objected to the sale of his patni on the ground, among others that the notice had not been given in accordance with S.8 of the Regulation inasmuch it had not been posted at the cutcherry of the defaulter, and where there was no evidence of service at the cutcherry, but there was evidence of service upon the defaulter personally, it was *held* that this was not sufficient and that the sale must be set aside. So also in the case of The *Maharajah of Burdwan V. Kisto Kamini Dassi*[39], where the serving peon gave the notice to one of the amlas of the cutcherry in the presence of the defaulting *patnidar* and obtained a receipt, it was *held* that there was no proper service. Where however, the *patni* was not a distinct *mouza* or a collection of *Mouzas*, but a small piece of land upon which there was no town, or village, or cutcherry of any kind. and the peon stuck up the notice in the Collector's office, and also at the sudden cutcherry of the Zamindar, and obtained the receipt of the defaulter of the latter place, he was held to have observed substantially, as far as he could, the provision of the law regarding notice, it being impossible to carry out literally the words of the regulation in the respect (*Hurri Kista Roy V. Motee Lall Mondal & others*).[40]

As to the 3rd notice, the words "the land of the defaulter" probably meant the land of the *patni* in arrears (*Lutfanissa Begam V. Kowar Ram Chandra*).[41] It was doubtful, however, whether the cutcherry, which was one of the places at which the notice should be published, must be upon the land of the defaulter which was the subject of default. In several cases, it was *held* that the cutcherry referred to in the Section need not be the cutcherry on the *patni* in arrear. Thus in the case of *Lutfanissa Begam V. Kowar Ram Chandra*[42] referred to above the Sudder Diwani Adalat expressed an opinion that

the cutcherry of the defaulter might be any cutcherry in which the collection of the tenure were made. Similarly in *Mungazee Chuprasi V. Shib Sundari*[43] where it was found that the notices at the collector's office and the Zamindari cutcherry had been duly published, but that the notice, required by Cl. 2, S. 8 of Regulation VIII of 1819, to be served at the cutcherry of the defaulter had been served at the cutcherry of the adjoining taluk, at which cutcherry the business of the *patni* in arrear was conducted, it was *held* that so long as the cutcherry at which the notice on the defaulter, as required by S. 8 Cl. 2, Regulation VIII of 1819, was served was an adjacent one, in which the business of the defaulting *patni* was carried on, and was on land belonging to the defaulter, publication at that cutcherry was a sufficient publication. 'We at first inclined to hold,' observed Glover, J., 'that the words of the Section 'to be Similarly published at the cutcherry or at the principal town or village upon the land of the defaulter' made it operative that the cutcherry at which the notice was to be served (where it was served at a cutcherry) should be upon the land which was the subject of the default ; but the meaning of the sentence is not absolutely clear. The comma after the word cutcherry gives, no doubt considerable strength to the argument of the defendant that the cutcherry need not be on the land which is the subject of default but may be on any other land, the property of the defaulter. And there is a decision of the late Sudder Court—*Lutfanissa V. Kowar Ram Chandra and others*[44], in which the same construction of the Section is declared. I do not desire therefore, to uphold my first impression, especially as it is deferred to the opinion of my learned brother Kemp. At all events I am prepared to hold with him so long as the cutcherry at which the notice on the defaulter, as required by the Act, is served, is an adjacent one, in which all business of the defaulting *patni* is carried on, and is on land belonging to the defaulter, publication at the cutcherry is a sufficient publication—the object of the law being to give information to tenant in arrear.'

In *Hanooman* aljas *Nona Bibi V. Biprochandra* Ray[45], again,

where it was found that the notice was affixed not at the cutcherry of the defaulter, but at the house of the gomastha, where the latter used to transact business except when the Zamindar came to the village, and that even then the Zamindar would frequently transact business at the *gomostha's* house and not at the cutcherry which was in the same village but in a ruinous state, it was *held* that, considering what a cutcherry was in a village in Bengal, and considering what the object of the Regulation was, viz. to ensure the publication of the notice to the defaulter or to his manager, it would be and was and infinitely more exact compliance with the spirit of the law to serve the notice at the place in which the defaulter's *gomasta* was transacting, and did habitually transact, business than to serve it at an empty and ruinous building. If it had appeared, observed the Court, that the building, denominated the *cutcharry*, had been in daily use, and that the records and the papers of the *mahal* were there, and that the servants of the defaulter were on that spot transacting their business there, then it may be admitted that the house of the *gomastha* for the time being could not be properly considered a place where the notice might be served under the Regulation ; but under the circumstances of the case, the house where the gomastha resided may fairly be regarded as the cutcherry for the time being.

This view has, however, been over ruled in the case to the *Maharajah of Burdwan V. Kisto Kamini Dassi*[46]. In that case a suit was brought to set aside sale of a *patni taluk* under Regulation VIII of 1819, and one of the grounds, relied upon by the plaintiff, was that the notice of sale had not been duly published. There being not sufficient compliance with the provision of S. 8 which requires that a copy of the notice shall be sent to be similarly published at the cutcherry, or at the principal town or village upon the land of the defaulter." The *patni taluk* in question was called Lot Amarpur, and, as the defaulting patnidar had other properties in the neighbourhood of that *taluk*, he had a small *mal cutcherry* on the land of this *taluk*, and another *dihi cutcherry* at a village,

called Mahanad, some 8 or 9 miles off from Lot-Amarpur. At this latter *cutcherry* all his principal business was transacted, including that of Lot-Amarpur, and it appeared that two *dar-patnidars*, who where the tenants of Lot Amarpur were always in the habit of paying their rents at the *dihi cutcherry*. The other *cutcherry* within the taluk was used for the purposes of receiving rents of the smaller tenants, which when received, were paid into the *dihi cutcherry* at Mahanad. The notice in this case was taken to the Mahanad cutcherry, and the serving peon gave it into the hands of one of the *amlas* at the *cutcherry* in the presence of the defaulting *patnidar* and obtained a receipt. It was contented that that the "cutcherry" referred to in the section meant the nearest large cutcherry at which the business of the landlord was usually carried on. *Held* by the Full Bench that the notice in this case was insufficient. If, the Judges said, there was a cutcherry upon the land of the defaulting *patnidar* (by which expression was meant the land of the *taluk* in question which Zamindar was seeking to sell for default of rent), the copy, or extract of such part of the notice of sale as may apply to the tenure in question, must be published at that cutcherry. If there was no such cutcherry, the copy of extract must be published at the principal town or village within the *taluk*. The mere delivery of the notice to the *patnidar* or to one of his *amlas* was not sufficient ; it must be published in the manner required by the Section. The case went on appeal to the Privy Council[47], and their lordships while confirming the decision of the Full Bench, observed : 'To hold otherwise might defeat some of the substantial objects of this Regulation. It appears from the preamble that one of the objects is to establish such provisions as have appeared calculated to protect the underlessee from any collusion of his superior with the Zamindar or other for his ruin, as well as to secure the just rights of the Zamindar on the sale of any tenure, and immediately afterwards occurred the statement that it had been deemed indispensable to fix the process by which the said tenures were to be brought to sale. The object of directing local publication of notices was

to warn the underlessees of the contemplated proceedings which may result in sweeping away their property, and also to act as advertisements to persons who may bid at the sale. Both these objects might, and in many cases would, be frustrated if it were sufficient to publish notice at any cutcherry which the *patnidar* may happen to possess, however distant it may be, or to serve it personally on the patnidar.'

Attestation by substantial persons or signature of three substantial persons were necessary. The third notice was required to be served in the mofussil by a single peon "who shall bring back the receipt of the defaulter or his mofussil agent, or in the event of his inability to procure this, the signatures of three substantial persons, residing in the neighbourhood, in attestation of the notice having been brought and published on the spot." The question as to who were "substantial persons" competent to attest the notice deserved notice. In a suit which was brought for the reversal of a sale of a *patni taluk* on the ground that the notice, required by Cl. 2, S. 8, Regulation VIII of 1819, had been duly served, and that, although the parties attesting the service of the notice of sale were sufficient in number, they were not, with the exception of the *Mondal*, what are called substantial persons, one being the Chowkidar of the village and the other a *ticca* tailor, the High Court observed :—'The word used in the Regulation is 'substantial', meaning of course men who have some stake in the community, men of local influence or importance or respectability. We think the law has been complied with on this point. One of the witnessess is a *Mondal*, the headman of the village ; another is the Chowkidar, an official whose attestation is always considered as the best possible in all matters connected with service of notice. The third appears to be a tailor residing temporarily at a place, but who lives in the neighbourhood. The man is declared to be not a proper witness. We do not see why the man is not to be considered competant to attest the service of notice. He appears to be a respectable man, though not a rich one ; and besides, the phrase 'substantial', on which the special appellant

lays so much stress, must be taken comparatively. In a small village the measure of a 'substantial' witness will of course be much lower than in a place of importance.' (*Gopal Krishna Soor V. Madan Mohan Haldar.*)[48]

A review was subsequently granted in this case, and the High Court reserved their judgement. They said :—'It is contended by the learned counsel for the applicant for review that the law requires that the attesting witnesses must be substantial, that is to say, responsible, moderately wealthy men, against whom in a case of false attestation the party injured may have his remedy in a suit for damages. Now in this case the attesting parties are sufficient in number and they reside in the neighbourhood, but, with the exception of the Mandal, the rest are not what can be called substantial persons. One is the *Chaukidar* and the other a tailor. The legislature invested the Zamindar with the power of bringing subordinate *patnis* to sale, and made him exclusively answerable for the due observance of the prescribed processes under which tenures could be brought to sale. To protect the *patnidar* from fraud it was enacted that the notice of sale must be attested by three substantial persons. Now, it is clear that, unless the attesting parties answer to the common meaning to be put upon the word 'substantial', the *patnidar* would be wholly without remedy in case of false attestation. If, as contended by Mr. Dyle (for the Resp.) the word 'substantial' means simply men who could be found, it would be sufficient to have enacted that the notice must be attested by 3 persons 'residing in the neighbourhood' ; the word substantial' was wholly superfluous.'

This case went on appeal to the Privy Council under the title of *Ram Sebak Bose V. Monmohini Dassi*[49], and their lordships were of opinion that this was too limited a view. "It is no doubt, desirable," they observed, that men of property should sign these receipts if they can be obtained, but wealth is only one element in the position and status of the witness, and if he lives in the neighbourhood, and if he be a respectable man and be of good character, their lordships see no reason

why, upon evidence appearing of such facts (of which the judge in each case may satisfy himself), the judge, in estimating the position of the man, may not properly come to the conclusion that he is a substantial person. In the present case, the evidence appears to show that the man objected to, carried on the trade of a tailor, that he had lakhiraj lands, that he lived in the neighbourhood was well-known, and was (to use a description built up of many circumstances) a 'respectable' person". Their lordships therefore considered the first judgement more correct than the last given on review which they accordingly reversed. A "substantial" person was, therefore, a respectable person of good character, such a *Mandal*, a *chawkidar* or a holder of *Lakhiraj* lands. He must have resided in the neighbourhood. This, however, did not make it imperative that he should be a resident of the village, but might be taken to include men living within a short distance of the cutcherry (*Mohinee V. Jugoobondhu*)[50].

In case the people of the village should object or refuse to sign their names in attestation, the peon was required to go to the cutcherry of the nearest Munsif, or if there should be no Munshif, to the nearest thana, and there make an affidavit of due publication—certificate to which effects shall be signed and sealed by the officers there and delivered to the peon. In *Ashanullah Khan Bahadur V. Haricharan Mozumdar*[51] the Judges observed that 'certificate to this effect' in Cl. 2, S. 8, meant a certificate to the effect that the peon did come to the Munsif of police-officer, as the case might be, and did make a voluntary oath as to the service of the notice. This provision of the Section would be fully compiled with if the peon went before the Munsif or police-officer and made a deposition upon oath. If the munsif appended at the foot of that deposition a statement to effect that the deponent had that day made that deposition in his presence, that would be a certificate within the meaning of Cl. 2, S. 8. And if the peon went before the Munsiff with an affidavit which had been prepared and sworn to, the *Jurat* of the Munsiff would be as much a certificate as if the peon had made a deposition on oath and the

Munsif had recorded the fact of his having done so[52]—The proof of the service of notice was sufficient. The observance of special formalities in the mode of service or attestation by witnesses was merely directory. In *Sona Bibi V. Lall Chand Chowdhury*[53], which was a suit to cancel a sale of an undertenure under Regulation VIII of 1819, it was *held* that, where a court found that the notice prescribed in Cl. 2, S. 8 of the Regulation had been duly served, it need not have found whether the peon, who served the notice, had or had not duly complied with all the directions of the Regulation with reference to what should be done after the service in verification thereof. Peacock, C. J., observed :—'The material part of Cl. 2, S. 8. of Regulation VIII of 1819, is that the notice required to be sent into the mofussil shall be served. The Zamindar is exclusively responsible for the observance of the forms prescribed by that clause. The subsequent part of the Section, which prescribes that the serving peon shall bring back the receipt of the defaulter or of his manager, or, in the event of his inability to procure it, that he shall obtain that which is substituted by the Regulation for it is merely *directory*, and, if not done, does not vitiate the sale, provided the notice is duly served.' This decision was referred to by their Lordships of the Privy Council in the case of The *Maharani of Burdwan V. Kisto Kamini* Dassi[54], and the principle laid down by Sir Barnes Peacock was explained as follows :—'The formalities which the Zamindar has to observe, and the evidence by which that observance has to be proved, are two totally different things. All that Sir Barnes Peacock decided was that, if the observance of the requisite formalities was distinctly proved it was not necessary to have the mode of proof which the Regulation directs. In the case of *Maharajha of Burdwan V. Tara Sundari*[55] the committee found that the question whether the requistite formalities had been observed dependent on conflicting evidence, but that the statutory mode of proof had clearly not been followed, and they held the decision must go against the Zamindar, whose business it was to follow the prescribed method. They did not differ from Sir Barnes

Peacock, nor did they hold that the statutory proof was the only proof that could be given. Neither Sir Barnes Peacock decide or intimate an opinion that one of the important formalities required as preliminary to a sale could be dispensed with.'

In *Bhugwan Chunder Dass & other V. Sudder Ali* & others[56], again, it was *held* that, although it was absolutely essential to the validity of a sale under the Regulation that the notice of such sale should be served in strict compliance with the directions given in S. 8, Cl. 2, of Regulation VIII of 1819, the provisions specifying the manner in which proof should be given of the service of the notice of sale are merely directory and non-essential. This could also be seen in *Hanooman alias Nonna Bibi V. Bipro Charan Roy*.[57] In *Ram Sabuk Bose V. Kamini Koomari Dassi*[58], which came up to the Privy Council in appeal from the decision of *Kemp and Glove*, J. J.[59], their Lordships referred to the case of *Sona Bibi V. Lal Chand & another*[60] (9 W.R., 24) and, quoting the judgement of Sir Barnes Peacock (vide ante), remarked that 'their Lordships are disposed to agree with the judgement of the High Court as delivered by Sir Barnes Peacock, confined as it is to cases where there is proof that the notice was dully served. The consequence of holding that a statutory sale of these *patnis* could be set aside, because one of the witnesses to the notice turned out not to be substantial, when it was in fact served would be to give too great effect to form at the expense of substance.' In a suit to set aside the sale of a *patni* for arrears of rent under Regulation VIII of 1819 on the ground that proper notices had not been sent, served and published under S. 8, Cl. 2, the objection in order to succeed must be one of substance and not merely of form. The requirements of the Regulation as to the service of *istahar*, and the signing of the receipt by substantial persons, may be held to have been substantially performed where the persons signing are such as one usually expected to attest such a document, persons who are treated with consideration, e.g., *Ameens, Mukhtears and Chowkidars Pitambar Panda V. Damodar Dass*).[60a] In this case, as the

circumstances showed that the *patnidar* had actual notice of the proceedings, the Judges did not think it necessary to look very strictly to the formal proof. They observed : 'Although we think it very important that service of the notice should be strictly proved by the Zamindar, and that the receipt should be signed by substantial men of the neighbourhood, who would be likely to bring it to the notice of the *patnidar*, we think the circumstances of this case are not such as to induce us to look very strictly to the formal proof if we believe, as we believe, that the pandas had actual notice of the proceedings.' (Ibid).

There must, however, be clear proof that the notices have been duly published. The fact should not be left as a matter of controversy. In a suit to set aside a sale of a *patni taluk* held under the provisions of S. 8, Regulation VIII of 1819, where there was no evidence one way or the other to show that the notice required by that section to be stuck up in some conspicuous part of the Collector's Cutcherry had been published, it was *held* that the plaintiff was entitled to a decree setting aside the sale (*Hurrodoyal Roy Chowdhury V. Mahammad Gazi Chowdhury & others*).[61] In a suit brought to set aside a sale held under Regulation VIII of 1819, it appeared that the notification had been duly made at the Collector's Cutcherry, and in the *Sadar Cutcherry* of Zaminder ; but the question was, whether the notice required to be published upon the land belonging to the defaulter had been duly given. The Lower Court, upon the evidence, found that it had, although the serving peon had not brought back the receipt required. The High Court, however, found that, there being no independent evidence that the peon had been entrusted with the service of the notice in question, and none, except his own, to show that he even went to the village, the due publication of the notice had not been proved. The case went on appeal to the Privy Council. Their Lordships *held* that, although objection to the form of the receipt and the absence of the receipt itself need not be regarded, if the fact of the due publication of the notices having been made is not a matter of controversy (as held in *Sona bibi V. Lal Chand Chowdhury*).[62] Yet where that

fact was in doubt owing to the evidence of it not having been secured according to the provisions of the Regulation—a result due to the neglect of those representing the Zamindar—the finding of the High court that due publication had been established by such proofs as were forthcoming was correct. "Their Lordships desire", observed the judicial 'to point out that the due publication of the notices prescribed by the Regulation forms an essential portion of the foundation on which the summary power of sale is exercised, and makes the Zamindar, who institutes the proceeding exclusively responsible for its regularity. Their Lordships do not, however, intend at all to controvert a decision, to which their attention was called, of Sir Barnes Peacock, when he filled the office of Chief Justice of the High Court of Bengal, to the effect that if the notice itself has been duly published, if it is not a matter of controversy, if the fact was ascertained that it was duly published, then one would not regard any objection either to the form of the receipt or the absense of the receipt itself. That decision was allued to in a case before this tribunal, in which their Lordships say, they are disposed to agree with the Judgement of the High Court confined as it is to cases where there is proof that the notice was dully served. That, again, is where there is no controversy as to the fact of the service. It seems to their Lordhips that the object of the Regulation was that due service or publication should not be left a matter of controversy. The evidence should be secured immediately afterwards, and exist in writing and be referred to by the proper officer as part of the foundation of the sale. Accordingly, if immediately upon posting the notice, the peon posting it can find the defaulter or his manager, he is bound to ask for a receipt from the defaulter or his manager signed under his hand, and if he gets such a receipt there is an end to all questions as to service. If he does not find the defaulter or his manager, or if that person will not sign a receipt, then he is to call in substantial people of the village to attest the fact, which will be apparent to their eyes, that the notice in question have been published. If they object, as very likely villagers would object, to be par-

ties to the proceedings for the enforcement of a sale, then he is obliged go to the nearest Munsif, and make a voluntary oath of the fact of service, which act is immediately recorded, and forms the foundation upon which the officer afterwards proceeds in carrying out his sale. Thus the evidence that the notice has been given is immediately preserved and the fact is not left to be matter of controversy afterwards. The issue in this case is as to whether the provisions of Regulation VIII of 1819 have been complied with. The case before us differs from that before the Chief Justice of Bengal, and equally from the case which was before this tribunal, in this, that the fact of service here is a matter of controversy. (*Maharaja of Burdwan V. Tara Sundari Debi*).[63] The law on the subject has been well summed up in the case of *Bejoy Chand Mahatab V. Amrita Lall Mukherjee*[64], where it was *held* that it follows from the decisions in the case *Maharaja of Burdwan V. Tarasundari Debi*[65], and in the case of *Maharaja of Burdwan V. Kisto Kamini Dassi*[66] that if the fact of the due publication of the sale notice be not in controversy, be not the subject of conflicting evidence, and the only dispute is as to whether the statutory mode of proof of such publication was resorted to, then it is not incumbent upon the Zamindar to show that the formalities prescribed by the statute have been complied with, but that, if there be a conflict of evidence on the point, and the Zamindar cannot show that the satutory method of proof prescribed has been followed, the decision must go against him, as it is his business to follow the prescribed method. Clause 2, S.8 observed Banerjee, J., in this case, 'indicates indirectly, no doubt, that the notice is to be published, and then the serving officer is to make some *bona fide* endeavour to obtain the receipt of the defaulter or his manager ; and it is only in the event of his inability to procure such receipt that the other modes of proof are to be resorted to. In saying this, I must be understood to mean that the receipt of the defaulter or his agent is necessary, or that personal service of the notice is required. The law does not make personal service of notice on the defaulter necessary or sufficient. But it must be borne

in mind that where there is a dispute as to the due publication of the sale notice, the question whether the serving officer made any *bonafide* endeavour to obtain the defaulter's or his agent's receipt in the first instance, as required by law, must have an important bearing upon the inquiry, especially where the point for determination is whether the alleged publication was real or colourable only. Of course, what would be a sufficient endeavour to obtain such a receipt must depend upon the circumstances of each case.'

Clause 2, S. 8 of the Regulation, laid down that the notice must be published at any time previous to the 15th *Bysak* in order that the sale might take place on the appointed day. The object of the law was that the defaulter should have full and timely notice of the Zamindar's intention to sell the tenure for non-payment of rent. Looking to the terms of Section 8, it was said in *Horo Nath Gupta V. Jaganath Roy Chowdhury*[67], it is impossible to say that it was not a distinct and an obvious object of the Legislature to provide a sufficient notice to a defaulter before a sale took place of his tenure, 15 days' time (and not less) being considered sufficient; without such notice no sale could be a sale duly held under the law. The question as to whether the notices must be served before the 15th *Bysak* or the 15th *Kartic*, as provided by the Regulation, was at first doubtful. In one case it was *held* that so long as the notice was served either previous to, or on the 15th, it was sufficient. In this case, A, a twelve annas share-holder of a *patni* tenure, brought a suit to set aside a sale upon the ground, among others, that the notification of sale had not been published before the 15th Bysak as required by Cl. 2, S. 8. The defendants were the Zamindars and purchasers at the sale. The receipt for the service of the notice was dated the 15th Bysak, and was signed by 4 Mondols of the village, in which the plaintiff's *mal cutcherry* was situated. The serving peons deposed that they had served the notification of sale on the holder of the 4-annas shareholder on the 13th or 14th of Bysak, and that they went to the plaintiff's house on the same day, but found neither the plaintiff

nor his servant there; that they went on the following day to the plaintiff's *mal cutcherry* and were unable to find the plaintiff or his *gomastha* or any other servant, and that they, therefore, sent for the village *Mondals*, read the notice to them and affixed it to the cutcherry, and obtained from them the receipt, dated the 15th Bysak. The sale took place on 3rd of Joistha, 17 days later, and it was *held* that the receipt of the notice of sale was dated the 15th Bysak. "In the receipt which has read to us in this case" observed the Judges, was not a sufficient ground for setting aside the sale of a *patni* tenure for arrears of rent. "In the receipt which has been read to us in this case," observed the judges, the particular time of publication is not stated. The receipt is dated 15th, and has the signatures of 3 substantial persons. .....It might very well be that the previous day or days had been spent in vain efforts to procure the signature of the patni or his agent and that the receipt was afterwards completed by the signatures of the Mondals, obtained on the 15th Bysak, and this might well have satisfied the collector that the notice had been in fact published previous to the 15th. That being so, and no injury to the plaintiff at all being made out, it appears to us that the ground set up is wholly insufficient to induce this Court to set aside the sale." (*Matangee Charan Mitter V. Mooraree Mohan Ghosh*).[68]

This view was, however, overruled by the Full Bench in *Sarnamoyi Debya V. Girish Chandra Mozumder.*[69] In that case a *patni* was sold on the 2nd of *Aghran* 1293 under the provisions of Regulation VIII of 1819, the notices of sale having been published on the 15th Kartik, and the question referred to the *Full Bench* was whether the publication of the notices relating to an impending *patni* sale, made on the 15th Kartik, i.e., on a date later than that prescribed by law, is not a sufficient ground for setting aside a sale subsequently held, and whether, under the terms of S. 14, this was a sufficient plea for a reversal of that sale." The Full Bench *held* that the words "cause similar publication to be made" in Cl. 3 meant a publication similar to that which was prescribed by

the preceding Cl. 2, and that the requirements in that clause, so far as the publication of the notice of sale was concerned, and the period at which it was not be published, must be imported into Cl. 3 *mutatis mutandis*. The provision of Cl. 2 that, where the notice had been served *previous to the 15th of the month*, there shall be a sufficient warrant for the collector to sell the *patni* must, therefore, be incorporated in Cl. 3 of the same section, so that it was when the notice had been published *previous* to the 15th of the month of *Kartik* that the Collector was authorised to sell. Non-compliance with such direction was, they said, a "sufficient plea" within the meaning of S. 14 of the Regulation for the reversal of a sale held thereunder.

It could be observed, however, that the provision as to the notice being stuck up before the 15th Bysak or 15th Kartik did not apply to the notice which was to be affixed at the Collectorate, but to the notice which was to be published in the mofussil. The question came up in *Sheik Niamat Ullah V. A. H. Forbes and others.*[70] There the notice of the sale that was affixed in the Collectorate was not published till the 18th Bysak, and it was contended that it should have been published there not later than the 15th Bysak, but it was *held* that the provision in S. 8 of Regulation VIII of 1819 requiring the notice of sale to be published before the 15th *Bysak* applied to the notice to be published in the mofussil, and not to the notice to be affixed at the Collectorate. The words in the section 'the same shall then the stuck up in some conspicuous part of the cutcherry' did not mean that it must have been stuck up either immediately or before the service of the other notices, referred to in the section at least before the 15th of Bysak, the word "then" not necessarily meaning immediately : it may mean "afterwards". It will be a sufficient compliance with the provision of the section if the petition be stuck up in a conspicuous part of the *cutcherry* within a reasonable time before the sale. "Having regard", said the judges, to the fact (1) that the law prescribes no definite time within which this petition must be stuck up and, (2) that the other notices were served in due time so as to give due notice

of the sale, we cannot say that the publication of the petition on the 18th *Bysak* was not within a reasonable time of the sale.

What were the *effects of defective services of the notice of sale* ? When a *patni* sale was impeached on the ground that the notices required by the Regulation have not been duly served, the sale was voidable and capable of reversal in a suit under S. 14 of the Regulation. The validity of the sale was affected by the failure of the Zamindar to comply with the provisions of the Regulation as to the issue and service of the requisite notices and the sale was liable to be annulled in a suit instituted under S. 14, but the sale could not be treated as a nullity (*Ramsona Chowdhurani V. Sonamala Chowdhurani*).[71]

The sale must have taken place on the date advertised or on any subsequent date after due notice. The sale on a proceeding at the end of the year took place on the 1st of *Jeyt* following, but if that date falls on a Sunday or holiday, should be selected. Where a sale was advertised to take place on 5th Jeyt, 1269, which date was erroneously stated in the sale notice to correspond with Saturday, the 17th May, 1862, whereas the 5th of Jeyt was, in fact, Sunday, the 18th May, and the sale took place on Saturday, the 17th May, 1862, corresponding with the 4th *Jeyt*, the sale was held to be illegal in consequence of its not having taken place on the 5th *Jeyt* as advertised or on any subsequent day to which the sale might have been adjourned after due notice. Steer, J., remarked :— "Regulation VIII of 1819 speaks of the Bengalee month, and prescribes that the sale shall be held on a day in the month of *Jeyt*. The date of sale requires to be a Bengalee date, a day in *Jeyt* ; and English date need not be given at all ; and if it is given, it is not given as intimating that the sale shall be made on that date, but merely to supply an English date corresponding with the fixed date in Bengalee. When, therefore, the Collector discovered, and he should most certainly have discovered it, that the 5th *Jeyt* was not the 17th May, and that the 5th *Jeyt* fell on a Sunday, he should have selected

the next following open day, viz., Monday, the 6th *Jeyt*, corresponding with the 19th May, for holding the sale. Instead of doing this, he proceeded to sell the *patnitaluk* on the 17th May, or on the 4th *Jeyt*, that is a day previous to the fixed day. Every sale requires, as conditions precedent to it, to be made at the place where the advertisement says it shall be held, and on the day advertised, or on any subsequent day to which the sale may be adjourned after due notice. To hold a sale on the 4th *Jeyt* which is advertised to be held on the 5th *Jeyt*, without any prior notice of change of date, is in fact, to sell without notice and is no sale at all." (*Bacharam Mukherjee V. Issur Chunder and others*).[72]

Similarly the mid-year sale takes place on the 1st Aughan and, if that is a close day, on the first opening day of the month. In both cases an interval of 30 days is allowed between the date of the application and the date of the sale. This practice is based on the authority of a decision of the late Sudder Court (*Woomesh Chandra Roy V. Esan Chandra Roy.*)[73]

The Zamindar was exclusively answerable for the observance of the forms prescribed for the publication of notice. The onus lied on the Zamindar even if the plaintiff adduced no evidence in support of his plea of nonservice. There was no presumption in favour of the Zamindar of the notices having been duly served, and it was not even necessary for a plaintiff, who brought a suit to reverse a sale, to set out the grounds for impeaching the due publication of the notice. In a suit against a Zamindar to reverse the sale of *patni* tenure, held under Regulation VIII of 1819, on the ground of non-service of notice, it was *held* that the onus of proving service was "not improperly laid on the defendant (the Zamindar) according to the spirit of S. 106 of the Evidence Act, viz., that the fact was specially within the knowledge of the defendant, and the burden of proving the fact ought to have been upon him. The defendant was the Zamindar, and was, under S. 8 of Regulation Cl. 2, burthened with the entire responsibility of serving the usual notices : and it was within his special knowledge whether such notice had been served or not" (*Durga Charan Surma V. Syed Najuddin*).[74] In *Maharaja of Burdwan V. Tarasundari Debi*,[75] their Lordships of the Privy Council observed that the due publication of the notice as prescribed by Regulation VIII of 1819, S. 8, Cl. 2, formed an essential part of the foundation on which the summary power to sell a *patni taluk* for non-payment of rent was exercised by the Zamindar, who, when instituting the proceeding, was exclusively responsible for such publication being regularly conducted. So also in *Hurrodoyal Roy Chowdhury V. Mahammed Gazi Chowdhury and others*[76] it was *held* that it lied upon the defendant to show that the sale was preceded by the notice required by that sub-section, the service of which notices was an essential preliminary to the validity of the sale. In the case of *Rajnarain Mitra V. Ananta Lall Mundul*[77], however, Tottenham, J., expressed a contrary opinion (Ghose, J. expressing no opinion), and remarked :— "The lower Court placed that burden (the burden of proof in respect of the publication or non-publication of the notices) on the defendant Zamindars, and held that they had not proved proper publication. The lower Court gave no particular reason for relieving the plaintiff of this burden, but in this court the vakeel for the respondents has supported this ruling by pointing out that the Regulation makes the Zamindar exclusively answerable for the observance of the forms prescribed, and by reference to the authority of the cases of the *Maharajah of Burdwan V. Tarasundari Debi*[78] and *Mohomed Zamin V. Abdul Hakim*[79], and of an unreported *case Hurodayal Chowdhury V. Mohomed Ghazi Chowdhury*[80], decided lately by Pigot and Macpherson, J.J. The first two cases do not lay down that the plaintiff need not give *prima facie* evidence of non-publication sufficient to require the defendant Zamindars to prove the affirmative : and having regard to the general principle that a plaintiff is bound to prove his case and to the terms of S. 14 of the Regulation which is the law authorizing a suit to be brought to set aside a Patni sale, I confess I do not see why the plaintiff should be relieved of the burden of starting his case. The regulation entitles any person to sue the Zamindar for the reversal of the sale, and upon *establishing a sufficient plea*, to obtain a

decree. Non-service of notice may be a sufficient plea, but to allege it not of itself sufficient to establish it, and, if no-evidence as to publication was adduced on either side, it seems to me that plaintiff would not be entitled to a decree. The provision in S. 8 that the Zamindar is exclusively answerable for the observance of the forms, means, I take it, that the Collector shall not held responsible : and does not mean that, in a suit by the defaulter to set aside the sale on the plea of non-observance of the forms, he shall not be required to do more than allege that they were not observed." It can also be observed that there is no analogy between the case of a sale for arrears of revenue and that of a *patni-taluk*. In a suit to set aside a *patni* sale the burden of proving due publication lies entirely upon the Zamindar, while, in the case of a revenue-sale, the burden of proving irregularity is on the party who impeaches the sale (*Sheo Rutan V. Netlall Shaha*).[81] The plea of non-service or of informality of any particular notice may be taken at any stage of the suit and even for the first time in appeal (*Ashanulla V. Hari Charan Mozumdar*).[82]

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CHAPTER VI

SALES OF PATNI RIGHTS-II

How the patni sales were conducted in practice should be explored still further to follow up the Zamindar-patnidar relationship in more intimate details. The section 9 of the Regulation VIII of 1819 noted :

'All sales of saleable tenures applied for under the rules of this Regulation shall be made in public *cutcherry* ; the land shall be sold to the highest bidder, and every one, not the actual defaulter, shall be free to bid, not excepting the person in satisfaction of whose demand the sale may be made ; not the under-tenants of the defaulter ; fifteen per cent of the purchase money shall be paid immediately the lot is knocked down, and the officer conducting the sale shall be competent to refuse to accept a bid, or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose, or will be produced within two hours.' The most important point to be noted here is that the Zamindar could buy back a *patni* during sale for arrears. It was clearly mentioned, 'not excepting the person in satisfaction of whose demand the sale may be made.' Legal mechanism of buying back the patni right was thus open to Zamindar.

Under this section, a defaulter could not bid, he could not purchase a patni sold on account of his default to pay the *patni* rent, either in his own name, or in that of any other person (*Mirza Mohammed V. Krishna Mohan*).[1] So also where a contract was entered into by a *patnidar* with a stranger stipulating that the latter would purchase the *patni* which had been advertised for sale under Reg. VIII of 1819, and reconver it to him, receiving the amount of the purchase-money with interest and a further sum in addition by way of remuneration, it was *held* that the contract was invalid under the provisions of Sec. 23 of the Contract Act as being in contravention of the provi-

sions of Sec. 9 of the Patni Regulation (*Mohun Lall Babu V. Uddi Narain Bhaduri*).[2]

The term 'defaulter' included not only recorded, but also unrecorded shareholder, such as a joint patnidar. In *Gouri Kanta Bhattacharjee V. Raj Kishen Nath*,[3] the plaintiff sued for possession of a certain *patni* by setting aside a *patni* sale, on the allegation, among others, that in fact a defaulter was the purchaser, and that such purchase was illegal. It appeared that the purchase was made by one Ram Lochan Koond, *gomastha* of Kishen Kamal, ostensibly for the latter's brother, Gouree Kamal. It was not denied that the two brothers were members of joint undivided Hindoo family living in commensality, nor the fact that Kishen Kamal was a defaulter. It was *held* that not merely recorded shareholders, but all actual defaulters (such as joint *patnidars*), are prohibited from being purchasers of a *patni*. "The law", observed the court, "does not provide that that the recorded shareholder, and he only, shall be considered the defaulter, but that those, who have been actual defaulters, that is, directly responsible either as joint or separate *patnidars* for the rents, shall not repurchase, so that the Zamindar may not again be exposed to liability for further default by, or have to deal with, those who have before defaulted. In this view there is no doubt that Gouree Kamal was one of the joint *patnidars* ; and that, therefore, he or those who stand in his shoes, would not by law be entitled to purchase at the auction sale."

The Zamindar himself or any other under-tenant, including the *darpatnidar* of the defaulting *patnidar* were entitled to bid (*Bykunt V. Monee*[4] ; *Sreenath V. Ramdhon*[5] ; *Sreemutty V. Govind*[6] ; *Fukeer V. Hills.*[7] A mortgagor of the patni was not a defaulter, and was entitled to make the purchase.

Section 10 of the Regulation detailed out the forms to be observed in selling. The procedure showed that the Zamindar was to make all arrangements for sale in this, such as the Collector was to make all arrangements in the case of revenue sales of the defaulting zamindaries ; 'A person shall attend on the part of the Zamindar with a particular statement of the payments...with the receipt for, or certificate of the notice directed

to be published in the mufassal... The Zamindar shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, nor shall the public officer making the sale be answerable in any respect, except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this Regulation.'

The most important aspect of patni sales Regulations was that the tenures were to be sold free from incumbrances. The *darpatnis* created by the defaulting patnidar, or the mortgages given by him would all be considered null and void on the sale of the *patni*. The Section II of the Regulation might be called the magna carta of the Zamindars : 'First—It is hereby declared, that any *taluk* or saleable tenure that may be disposed of at a public sale, under the rules of this Regulation, for arrears of rent due on account of it, is sold free of all incumbrances that may have accrued upon it by act of the defaulting proprietor, his representatives or assignees unless the right of making such incumbrances shall have been expressly vested in the holder by a stipulation to that effect in the written engagements under which the said taluk may have been held.'

'No transfer by sale, gift or otherwise, no mortgage or other limited assignment, shall be permitted to bar the indefeasible right of the Zamindar to hold the tenure of his creation answerable, in the state in which he created it, for the rent which is in fact his reserved property in the tenure, except the transfer or assignment should have been made with a condition to that effect under express authority obtained from such Zamindar.'

'Second—In like manner, on sale of a taluk for arrears, all leases originating with the holder of the former tenure, if creative of a middle interest between the resident cultivators and the late proprietor, must be considered to be cancelled, except the authority to grant them should have been specially transferred, the possessors of such interest must consequently lose the right to hold possession of the land and to collect the rents of the raiyats ; this having been enjoyed merely in consequence of the defaulter's assignment of a certain portion of his own interest, the whole of which was liable for the rent.'

'Third—Provided, nevertheless, that nothing herein contained shall be construed to entitle the purchaser of a *taluk* or other saleable tenure intermediate between the Zamindar and actual cultivators to eject a khudkasht raiyat or resident and hereditary tenants by the late incumbent or his representative, except it be proved in regular suit, to be brought by such purchaser for the adjustment of his rent, that a higher rate would have been demandable at the time such engagements were contracted by his predecessor.'

Thus the Regulation did not define the term 'incumbrance' but provided that when a *patni taluk* was sold for arrears of rent, it was sold free from all incumbrances that might have accrued upon it by act of the defaulting proprietor, his representatives or assignees. As instances of incumbrances the above section pointed out transfers by way of sale, gift or otherwise, mortgages and other limited assignments and also leases created by the holder of the tenure. These instances of incumbrances, could not, however, be regarded as absolutely exhaustive. It was necessary, therefore, to examine the meaning of the term "incumbrance". Wharton, in his Law Lexicon, defined the term as "a claim, lien, or liability attached to property." This definition was adopted by Romer, J., in *Jones V. Barnett.*[8] Sweet, in his Law Dictationary, observed that to encumber land was to create a charge or liability, for example by mortgages, and added that incumbrances included not only mortgages and other voluntary charges, but also liens, *lites pendentes*, registered judgements and writs of execution. In the Oxford Dictationary, an incumbrance was broadly defined as a burden on property, and reference was made to Bacon's Maxims and uses where he spoke of certain acts as collateral incumbrances. In the Encyclopaedia of American and English Law an incumbrance is defined as a burden upon land depreciative of its value, such as a lien, easement, or servitude which, through adverse to the interest of the land-owner, did not conflict with his conveyance of the land in fee. Similar definitions were given in the Law Dictationaries by Abbott and Anderson. Bonvier, in his Law Dictationary defined an incumbrance as "any right to, or

interest in, land which may subsist in a third person to the diminution of the value of the land, and not inconsistant with the passing of the fee in it by a deed of conveyance, which was taken from the decision in *Prescott V. Trueman.*[9] In *Memmert V. Mckeen*[10] an incumbrance was stated to be a burden on a charge on property, a claim or a lien on an estate which may dismiss it in value, and incumbrances were then divided into two classes, namely first, such as affect title to the property; and secondly, such as affect only the physical condition of the property. A mortgage or other lien is a fair illustration of the former, while a public road or right of way is an illustration of the latter. In *Jogeshwar Mozumdar V. Abed Mahomed Sikdar*[11] an incumbrance was declared to mean anything that restricts or limits the rights of a *patnidar* and interfers with his enjoyment of the subject of the *patni.* And lastly, Section 161 of the Bengal Tenancy Act defined the term as "any lien, sub-tenancy, easement or other right or interest created by the tenant in his interest therein and not being a protected interest." These definitions were comprehensive enough to include rights other than those mentioned in the Section as incumbrances.

Several instances of incumbrances may be discussed. It had been *held* that a customary right to cut and appropriate trees was within the meaning of Sec. 11 of Regulation VIII of 1819 (*Pradyote Kumar Tagore V. Gopi Krishna Mundal*).[12] "It is obvious", observed the Judges, that if a right granted to another to cut and appropriate trees on land is treated as an incumbrance, a customary right which has precisely the same effect may be comprehended in the term 'incumbrance'. By way of analogy, it may well be maintained that a customary right which owes its origin and growth to the acquiescence of the landlord stands in the same footing as a right expressly granted by him; so that, if a right to cut and appropriate trees expressly conferred on a stranger be treated as an incumbrance, a customary right of that description may very well be included in the same category. We are consequently not prepared, as at present advised, to overrule the contention

that a customary right to cut and appropriate trees may be an incumbrance on the property.

A lease just as much as a sale, gift of mortgage must come within the meaning of the word "incumbrance" (*Jogeshwar Mozumdar V. Abed Mahomed Sikdar.*[13] It was also in the case of *Thakur Das Roy V. Nabin Kishen Ghosh*[14] ; *Mahomed Askur V. Mahomed Wasak* ;[15] and *Gopendra Chandra Mitter V. Mokaddam Hossain.*[16] An under-tenure, e.g. a *darpatni* was an incumbrance within the meaning of S. 11 of Regulation VIII of 1819 (*Brindaban Chandra Chowdhury V. Brindaban Chan Sirkar Chowdhury*).[17]

An under-tenure under a *patni* did not become a protected interest within the meaning of S. 160 of the Bengal Tenancy Act, even though the Zamindar may have knowledge of the creation of the under-tenure and might have received the *patni* rent through him (*Mohomed Kaem V. Nafar Chandra Pal Chowdhury*).[18] A non-occupancy holding was an incumbrance which an auction purchaser had a right to annul under S. 159 of the Bengal Tenancy act (*Ram Lull Sukul V. Bholagazi*).[19] An exchange of land was an incumbrance within the meaning of S. 161 of the Bengal Tenancy Act (*Chandra Sakai V. Kali Prosunno Chuckerbutty*).[20] It had been *held* that a right, created, by adverse possession, against the sold-out proprietor was an incumbrance which a purchaser at a revenue-sale under S. 37, Act XI of 1859 was entitled to set aside (*Karim Khan V. Brojonath*).[21] It was also in the case of *Thakur Das Roy V. Nabin Keshore Ghosh* ;[22] *Goluk Meni V. Haro Chunder* ;[23] *Nobin Chunder V. Taylor.*[24] Such a right had also been held to be an incumbrance within the meaning of Reg. VIII of 1819 (*Khantamoni V. Bejoy Chand* ;[25] *Lukhmee V. Collector of Rajshahie* :[26] *Ram Sunker V. Bejoy Govind.*[27] Such an adverse possession was also an "incumbrance" within the meaning of Art. 121, Sch. 11 of the Limitation Act, Act XV of 1877 (*Nafar Chandra Pal Chowdhury V. Rajendra Lall Goswami*[28]. It could be noticed that, whatever might be the nature of the particular incumbrance, it must have been either created by the tenant or acquiesced in by the landlord.

So a mortgage created by the operation of S. 171 of the Bengal Tenancy Act in favour of a person, who paid the decretal amount and saved a tenure from sale was not an incumbrance, and, as such, not liable to be avoided by the purchaser of tenure at a sale in execution of decree for arrears of rent (*Pasupati V. Narayan*).[29] S. 171 of the Bengal Tenancy Act was based on S. 13 of Regulation VIII of 1819, and consequently a mortgage created by the operation of the latter section had the same effect. When a mortgagee of a tenure had enforced his lien and obtained his decree, it was no longer an incumbrance on the tenure (*Abhai Kumar Sen V. Bejai Chand.*)[30] An occupancy or non-occupancy holding, if not held by a *khudkhast* raiyat, that is, a resident and hereditary cultivator, was an incumbrance (*Jogeshwar V. Abed Mahomed*).[31]

In the case of arrears of rent, a landlord of a patni taluk had two courses open to him : he might either proceed under Regulation VIII of 1819 or he might sell the taluk under chapter XIV of the Bengal Tenancy Act. The provisions of that chapter applied to patni tenures in addition to the summary procedure laid down in the patni enactments. In either case, on a sale being finally confirmed, the purchaser was entitled to avoid the incumbrances created either by the actual defaulter or by any of his predecessors and to have possession of the *taluk* in the same state as it stood at its creation by the Zamindar. (*Mussamat V. Luckeemoni,*[32] *Umanath V. Raghoonath* ;[33] *Brojosundari V. Fatik Chandra Roy.*)[34] So, where lands appertaining to certain *taluk*, which was sold under Regulation VIII of 1819 for arrears of rent, were held from the owner under a *Kaima jama* tenure under which the plaintiff, who sued the purchaser for confirmation of his title, cultivated the lands through persons called *burgaits* with whom he shared the profits in the same way, it was *held* that, under Sec. 11 of that Regulation, the plaintiff's tenure was cancelled (*Mohim Chunder V. Jotirmay*).[35] In the case of *Gopendra Chandra Mitter and others V. Mokaddour Hossein and others*[36] a *mukarari* lease was granted in 1839 to the

predecessors of the defendants by the then *patnidar* of a patni created in 1819. In 1848 the *patni* was sold for arrears of rent under the provisions of Regulation VIII of 1819, but the purchaser at that sale did not interfere with the *mukarari*. In 1885 the *patni* was again brought to sale under the same Regulation for arrears of rent, the default being made by the successors of the purchaser in 1848, and at this sale it was purchased by the plaintiffs. In 1890 the plaintiffs sued to set aside the *mukarari* lease, contending that they were by virtue of their purchase, entitled to avoid all incumbrances created by any *patnidar*, and were not restricted to avoiding merely those created by the immediate defaulter. The defendants contended that the provisions of S. 11 of the Regulation restricted the plaintiffs to avoiding incumbrances which were the acts of the immediate defaulter, and that, as the purchaser in 1848 and his successors in title previous to the default in 1885 had not interfered with the mokurrari lease, the plaintiffs could not have it set aside. *Held* that the plaintiffs were entitled to avoid the *mukarari*. Held also that, having regard to the policy and principle of the Regulation, a Zamindar was entitled to bring a patni to sale in the same condition in which it was at the time of its creation, and the purchaser was, therefore, entitled to avoid all incumbrances imposed upon it since its creation, whether by the actual defaulter or by any of his predecessors. Ghose J. observed :—The *mokurrari* lease was incumbrance upon the patni, but in as much as Sec. 11 distinguishes in Clauses 1 and 2 between incumbrance, by way of sale, gift, mortgage or otherwise, and leases creative of an immediate interest, it may be regarded as the latter. If treated as an incumbrance, it must be held to have accrued upon the *patni* by reason of the defaulting Zamindars not having set it aside, though entitled to do so within the meaning of those words in Clause 1. If treated as a lease, the words in Clause 2, '*holder of the former tenure*' are wide enough to include any *patnidar*, whether the last or the previous holder.

The same view was taken in the case of *Eshan Chandra Kar V. Madhab Chandra Ghose*[37] which was quoted by

Beverley J., in the case of *Gopendra Chandra Mitter V. Mokaddam Hossien*[38] referred to avove. The Judges observed : The law states that a patni taluk sold for arrears of rent is sold free of all incumbrances and leases to middlemen made by the defaulting proprietor. When the patnidar, who it is said, granted the defendant his lease defaulted and his *patni* was sold, that lease became then and there null and void. The new *patnidar* might recognise it, might receive rent under its terms, but it was under the law, cancelled and remain cancelled until such time as the new *patnidar* renewed it or recognised it as good against him. Similarly, as each succeeding *patnidar* defaulted, the leases given by each *patnidar*, whether they were new leases or mere recognition of old leases all fell to the ground when the last sale took place. An agreement may be raised against this view of the law on the mere wording of the provisions of Sec. 11 of the Regulation, but when the wording is taken into consideration with the principles so frequently laid down in that law (sections 3 and 11) and upon which all incumbrances and leases are declared void, we think there can be no doubt that the effect of the law is at once to void all such incumbrances and leases, upon a sale taking place, and that this effect is consequently applicable to the acts, not only of the last defaulting proprietor, but also of all previous defaulting proprietors.

The incumbrances, however, must be such as have come into existence since the creation of the *patni* taluk (*Bishumbhur V. Durga*[39]). Those existing previously were not voidable nor those which have been created with the permission of the Zamindar (*Pearce V. Meer*).[40]

The purchaser of the tenure at a rent-sale cannot annul a subordinate interest leaving untouched a superior interest immediately subordinate to the interest purchased by him. (*Mofizuddin Sirdar V. Ashutosh Chuckerbutty*).[41] 'The whole object, "observed the court in this case", of the reservation of a power in the auction-purchaser to annul incumbrance is to enable him to get rid of a subordinate interest the holder whereof may intercept the rent which would otherwise be legi-

timately payable to him. If, however, the purchaser is content to leave untouched the tenure holder immediately subordinate to the interest acquired by him, there is no intelligible principle upon which he should be allowed to annul incumbrances of an inferior grade. Indeed, if he were allowed to do so, the consequences might be very anomalous. To take one illustration, suppose that under a Zamindar X, we have a succession of subordinate tenures, A, B, C and D. X, in execution of a decree for rent against the holder of A sales up his tenure which is purchased by Y. If Y annuls C but not B, what is the position of the latter? He is liable to Y for rent, but cannot recover any rent from the holder of C, whose interest has been annulled, or from the holder of D, with whom he has no privity. It is manifest that if Y chooses to exercise his power to annul any incumbrance at all, he must begin with B and may proceed downwards as far as he chooses, but he cannot select arbitrarily any link in the chain and destroy it, while he allows those above it to remain unaffected." The same principle would apply in the case of sales under Regulation VIII of 1819.

Purchaser at a revenue-sale of a Zamindari, could transfer his rights to a *patnidar*. The rights, which were conferred upon a purchaser at a sale for arrears of revenue under Sec. 37 of Act, XI of 1859, were rights which were capable of being transferred to another person. A *patnidar* had, therefore, the right to exercise such rights (*Koylash Chunder V. Jabur Ali*).[42] But when a purchaser at a sale for arrears of revenue created a *patni*, he could not sue to annul a tenure within that *patni*, as his whole right passed to the *patnidar* who alone could institute such a suit. (*Sreemunt V. Kookoor Chanda*[43]). The same view was taken in the case of *Narayan Chandra Kansa Banik V. Kashishwar Roy*,[44] where it was *held* that not only can the power, given to an auction purchaser at a revenue sale to annual under-tenure under Sec. 37 of Act XI of 1859 be transmitted to a *patnidar*, but a *patnidar* even of a portion of a zamindari could exercise that power, if the whole of the under-tenure sought to be set aside lied within his *patni*.

The sale of a tenure for arrears of rent did not by itself cancel the incumbrances: it only gave the purchaser a power to do so, of which he might elect to avail himself or which he might lose by not exercising (*Govinda Chandra Bose V. Alimuddin*)[45], *Rani Sornomoyee V. Sutteesh Chandra Roy*[46]; *Raja Satya Saran Ghosul V. Mohesh Chandra Mitter.*[47] In *Annoda Charan Dass Biswas V. Mathura Nath Dass Biswas*[48], a different view was entertained. The Court held in that case that under Bengal Act VIII of 1865 Sec. 11, under-tenures became void *ipso facto* by the sale, and were not merely voidable at the option of the purchaser. So also in *Mohim Chunder Mozumdar V. Jotirmoy Ghose*[49] these two decisions have, however, been virtually superseded by the Full Bench decision in the case *Titu Bibi V. Mohesh Chandra Bagchi*[50], where it was *held* that the effect of a sale for arrears of rent under Regulation VIII of 1819 was substantially the same as that of a sale for arrears of revenue under Sec. 37 of the revenue law (Act XI of 1859). In either case the under-tenures were not *ipso facto* avoided by the sale, but were voidable only at the option of the purchaser. The same view was taken in the case of *Madhusudan Koondoo V. Ramdhan Ganguli.*[51] In that case it was decided that no sales for arrears of rent, not even sales under Regulation VIII of 1819, had *ipso facto* the effect of cancelling tenure created by defaulting owners; they merely gave to a purchaser the power to cancel such tenures if he thought proper. Markby, J. remarked: 'I think the Judge is wrong in saying that by the sale for arrears of rent, all the previous tenures created by the defaulting *patnidars* were cancelled. That appears to me contrary to the ruling of the Privy Council, (*Rani Sornomoyee V. Sutteesh Chandra Roy*), to that of the same court in 11 W.R. P.C. 11 and also to the decision of Justices Bayley and Dwarkanath in 11 W.R. 160. It is true that these decisions turned upon words of the law not precisely similar to those of Regulation VIII of 1819 Sec. 11, Cl. (i), but it is clear to my mind that it would be impossible to put a construction upon that Regulation different from that put in these decisions on the Regulations of 1793

and 1822 and Act VI of 1862, which are all in *pari materia* ; and I think it must now be taken as an established principle of law that no sales for arrears of rent have *ipso facto* the effect to cancel tenures created by defaulting owners, but merely to give to the purchaser, the power to do so if he thinks proper.' Although, however, the incumbrances were voidable, the purchaser might be precluded from exercising that right if he had accepted rent (*Shristeedhur V. Prannath* ;[52] *Sreemunt V. Kookoor.*)[53]

There were certain rights in land which were protected notwithstanding a sale under the Regulation. *Khudkhast* raiyats, or resident and hereditary cultivators, could not be evicted. The permanent tenants, settled in the villages, were called *Kuudkhast* raiyats, i.e. raiyats cultivating land of their own village or the village in which they resided, as opposed to *paikhast* raiyats, or raiyats who were residents of another or neighbouring village and cultivated land near their own village. The former had practically hereditary rights of occupancy, but the best authorities were agreed that they could not transfer their rights, i.e. sell their lands—this privilege belonging to the Zamindar alone. Their interest, or the right of occupancy into which legislation had turned it had, however, become not uncommonly saleable in the Lower Provinces. The latter had been held by all authorities to have no rights and to be mere tenants-at-will.

The distinction between the khudkhast and the paikast raiyats was nowhere mentioned in the Rent Act of 1859, though it was alluded to as still existing in some of the later enactments e.g. Act VIII of 1865. The broad distinction which existed between the rights of actual cultivators was the creation of Act X of 1859, which divided them into raiyats having rights of occupancy and those having no such rights and who were merely temporary tenants or tenants-at-will. Under the law, since B. T. Act in 1885, any raiyats who cultivated or held land for a period of 12 years, whether under a written lease or not, acquired a right of occupancy in the land so cultivated or held by him, so long as he paid the rent payable on account

of the same. The question, therefore, arose : Was an occupancy or a non-occupancy holding protected under Clause 3, Sec. 11 ? The point came up in the case of *Jogeshwar Mozumdar V. Abed Mohomed Sikdar*[54], where it was *held* than an occupancy or a non-occupancy holding if not held by a khudkhast raiyat i.e. a resident and hereditary cultivator, was an incumbrance and not protected from ejectment by the terms of Cl. 3, Sec. 11 of Regulation VIII of 1819, and might be annulled by a purchaser at a sale under the said Regulation. The law seemed to be that if an occupancy or a non-occupancy holding was *held* by a *khudkhast* raiyat it was protected, but not if it was held by a *paikast* raiyat i.e. a raiyat not resident in the village.

The *bona fide* engagements with such raiyats could not be interfered with the purchaser except under the special circumstances mentioned in Cl. 3 of Sec. 11. The purchaser of a *patni taluk* at a sale held under the Regulation sued a tenant within the *taluk* for a *kabulyat* at an enhanced rate of rent. The former patnidar had brought a similar suit, in which it was decided that the rent was not liable for assesment. *Held* that the purchase was bound by this decision and that he did not occupy a position analogous to that of the purchaser of an estate sold for arrears of Government revenue, who was not the privy in the estate of the former proprietor (*Taraprashed V. Ram Nursing*).[55] So also where the plaintiff, an auction-purchaser, sued the defendant, the holder of a tenure in perpetuity, not merely for an enhancement of rent, but also, without notice, for a kabuliyat at an enhanced rate, contending that, as an auction-purchaser, he was entitled to treat the defendant either as a tresspasser or enhance the rent to a fair value at his own option, it was *held* that if the plaintiff upholds the defendants' tenure, he must uphold it for the whole term for which it was originally granted. An auction-purchaser cannot as contended, compel the holder of a tenure in perpetuity to execute a *kabuliyat* acknowledging himself to be a tenant for one year at an enhanced rent (*Haran Chandra Ghose V. Guru Charan* Sircar).[56]

The grantor of a patni tennure, who subsequently purchased the lands granted by him in *patni* at the sale of the patni tenure, did not *ipso facto* revert to the position he held as proprietor (*Zamindar*), and was not entitled to recover rent from the tenants at the rate he was receiving when he granted the patni, without reference to the amount realized by the *talukdar* in the interim. There was no provision in the patni law which gave the purchaser at a patni sale the power to collect rent at a higher rate than was demandable by his predecersor without establishing his right to do so. The 3rd clause of Sec. 11 expressly providing that engagements entered into by a *patnidar* with a raiyat having certain defined rights should not be cancelled by a purchaser at patni sale execpt by a regular suit (*Majoramojha V. Rajah Nilmoni Sing*).[57]

Again, a purchaser of a *patni taluk* as a sale held under Regulation VIII of 1819 was not entitled to hold the property free from a customary right, or a right recognised by usage, which had grown up during the subsistence of the patni, and under which occupancy raiyats were entitled to appropriate, and convert to their own use, such trees as they have the right to cut down, in as much as he was not entitled to cancel a *bona fide* engagement made by the defaulting proprietor (Zamindar) with the resident and hereditary cultivators (*Pradyot Cumar—Tagore V. Gopi Krishna Mundle*).[58] 'The third clause of Sec. 11 of the patni regulation,' said the Judges in this case, 'provides that the purchaser shall not be entitled to cancel a *bona fide* engagement made by the defaulting proprietor with resident and hereditary cultivators. If the landlord made an engagement with such a tenant that he would be entitled to appropriate the trees in his holding, the purchaser of the patni taluk would, in our opinion, be bound thereby. A customary right in favour of all the tenants, by which they are entitled to appropriate the trees, would be equally operative against the auction purchaser. It is further obvious that, as pointed out by this court in *Majoramojha V. Raja Nilmoney Singh Deo*[59], the fact that the auction-purchaser is the original Zamindar who created the patni does not place him in a better position.

We must, therefore, hold that treating an engagement with a stranger by which he is authorised to cut and appropriate trees as an incumbrance imposed upon the land by the owner, treating further a customary right of this description, which owes its origin and growth to the acquiescence of the owner, as included in the category of incumbrances, the creation and growth of such right, whether contractual or customary, must in the present instance be regarded as *bona fide* engagement with a resident and hereditary cultivator, which the auction-purchaser at the patni sale is not entitled to abrogate.'

Where a *patnidar* commited default, and purchased the tenure when it was sold in execution of a decree against himself, he could not claim the benefit of the law relating to auction-purchaser under Sec. 105 Act X of 1859 and Sec. 11, Reg. VIII of 1819 and ask the court to set aside the title to a third party (e.g., that of a *darpatnidar*) which had been created by himself. Where he himself had sold to a third party he was bound to recognise that party's purchase and also all *bona fide* leases under that party (*Meheroonissa Bibi V. Hara Charan Bose*).[60]

A transfer or assignment made under the express authority of the Zamindar was also protected both under Regulation VIII of 1819 and under Sec. 160(g) of the Bengal Tenancy Act, Section 3 and 4 of Regulation VIII of 1819 could not be so read as to hold that, by them, the landlord expressly gave the *darpatnidar* permission to create a mortgage within the provisions of Sec. 160(g) of the Bengal Tenancy Act. A mortgage created by a *darpatnidar* of his interest in the taluk did not, therefore, amount to a protected interest within the meaning of that section (*Akhoy Kumar V. Maharajah Bejoy Chand*).[61]

Where raiyats having permanent interest in a holding sold a portion of it, and the transferees again sold a portion of their purchased interest to one R, and R obtained settlement from the landlord, it was *held* that the interest of the transferee was not an incumbrance, which could be avoided by the purchaser at a rent-sale (*Bhairab Chandra Chowdhury V. Okhil Chandra Chowdhury*).[62] A patni *kabuliyat* contained the clause, 'If I

should let out this mahal in *darpatni* to any person, such *darpatnidar* shall act according to the terms of my *kabuliyat*,' and it was *held* that the clause simply meant that, if the patnidar creates a subordinate tenure, the subordinate tenure-holder must perform the duties imposed upon the *patnidar* himself by lease and did not amount to an express or implied permission to the *patnidar* to create a *darpatni* within the meaning of Sec. 160(g) of the Bengal Tenancy Act. It was also*held* that knowledge on the part of the proprietor (Zamindar) of the creation of the *darpatni* and acceptance by him of the patni rent from the *darpatnidar* were not sufficient to constitute the darpatni a protected interest, within the meaning of that section (*Mahomed Kazem V. Nuffar Chandra Pal Chowdhury*).[63]

The purchaser was a representative of the Zamindar and was subject to the same rules as to the onus of proof as the Zamindar himself. It lay, therefore, upon him in the first instance to prove when the incumbrance was created. But as soon as he had made out a *prima facie* case, the burden was shifted and the holder of the incumbrance had to show that he was protected.

It was, therefore, well settled that a person, who had held possession of property adversely against a *patnidar* could not successfully set up such adverse possession against a person who had purchased the property at a sale under Regulation VIII of 1819, as against such a purchaser the adverse possession commenced from the date when the sale became final and conclusive. In *Woomesh Chandra Gupta V. Rajnarain Roy*[64], the principle which underlied this position, was elaborately examined by Sir Barnes Peacock, C. J., and it was pointed out that the cause of action of a purchaser of a tenure, sold free from incumbrances, accrued when he purchased it because it was sold in the state in which it was previously created, and the purchaser was entitled to have it in the state in which it was created, notwithstanding any under-tenure which might have been created by the defaulter and not withstanding any encroachments by tresspassers upon the holders of the under-tenures ; the purchaser had consequently a right to

turn out under-tenants and was also entitled to turn out persons who had encroached upon the defaulter. In *Woomesh Chandra Gupta V. Rajnarain Roy* a *patni taluk* was sold by auction for the arrears of rent and was purchased by the Zamindar who created it. More than 12 years before this purchase, a neighbouring *talukdar* had encroached on the *patni* and the question was whether his 12 year's possession was a good bar against the Zamindar suing to recover the land encroached upon. Phear, J., *held* that it was not and observed : 'that on the completion of the auction sale the patni merged in the superior title of the Zamindar vendee, who thus became entitled, not as claiming through the *patnidar* but by virtue of this original rights as Zamindar, to possession of the entire estate. In this state of things the with-holding possession from him attributed to the defendant constitutes a new cause of action, and is not simply a continuance of that which had before accrued to some other person (viz. the patnidar). The defendant's trespass is a violation of the plaintiff's right of possession which he is entitled to maintain by action independently of the fact that the tresspass in question is only a persistence in that which, was before a violation of the *patnidar's* right of possession. The violation of right in the two instances is not one and the same thing, because the two rights of possession are themselves distinct. The Zamindar does not acquire the right of possession from the *patnidar*, but he does so as a consequence of the patnidar's tenure and rights all falling to the ground.'

Bayley, J., however, *held* otherwise, His opinion was that the adverse possession by the third party was of the lands, the proprietory right of which remained with the Zamindar, and was not affected by the intermediate *patni* right to collect rents, etc., and that on that proprietory being interfered with, the cause of action arose. Whenever the adverse possession commenced, the Zamindar, he added could have sued whether there was a *patni* or not, and that as he did not, limitation barred the suit.

The case came up before the Court of Appeal[65] and that

Court agreed with the view expressed by Phear, J., and *held* that the cause of action to the Zamindar who was the purchaser of an estate free from incumbrances against the defendant, who was a tresspasser and had encroached on the *patnidar* (defaulter), must be taken to accord at the same time as the Zamindar's right to turn out the undertenants of the defaulter viz., from the time of the purchase of the tenure of the defaulter and the fact that the Zamindar was both talukdar and purchaser did not prevent him from exercising the same rights as any other purchaser would have been entitled to do.

So also in *Khantamoni Dassi V. Bijoy Chand Mahtab*[66], where the plaintiff sued to recover possession of some *lakheraj* land, situated within the patni property bought by the defendant at a *patni* sale, and where she claimed title by reason of her having, together with her predecessor, been in possession of the land for more than 12 years adversely to the landlord, it was decided that no adverse title could be pleaded against the defendant, who had purchased the property at a *patni sale* held within 12 years from the date of the institution of the suit, and who was entitled to it free from all incumbrance created subsequent to the original grant of the *patni*.

Again, in *Nafar Chandra Pal Chowdhuri V. Rajendra Lal Goswami*[67], where a suit was brought by the auction-purchaser, to recover possession of land situated within the taluk against a tresspasser, who alleged that he had held the land adversely, it was *held* that the period of limitation would in such cases begin to run from the date when the sale became final and conclusive.

In a case where, by virtue of a purchase under Regulation VIII of 1819, the Zamindar, a minor Hindu widow, became entitled to sue in ejectment, a tresspasser who had unlawfully dispossessed the *patnidar* and where such a widow, during the continuance of her minority and before her right of action became barred by limitation, took a son in adoption, it was ruled that the adopted son became clothed with all the rights which the adoptive mother had at the time of adoption and could sue in ejectment at any time during his minority, or

within 3 years from the cessation of infancy, although 12 years might have elapsed from the date of the purchase at the *patni* sale (*Harak Chand V. Bejoy Chond Mahtab*).[68]

Incumbrances like *Darpatnis, se-patnis* and such others were not to be relinquished when there was voluntary transfer and the Patni did not come to sale for arrears of rent. The main issue was the security and punctuality of rent payments; if it was done all incumbrances were allowed, if rent was not paid in time nothing was allowable. The section 12 was very much candid in this respect: 'Neither shall the rule for the fall of under-tenures be considered to apply to any private transfer by a *talukdar* of his own interest, nor to a public sale in execution of a decree, nor to the case of a relinquishment by the *talukdar* in favour of the Zamindar, nor to any act originating with the former holder, other than default as aforesaid: all such operations involve only a transfer of the tenure in the state in which it may be held at the time, and the new incumbent succeeds to no more than the reserved rights of the former tenant, such as they may be, and is of course subject to any restriction put upon the tenure by this act.'

The next section, i.e. Section 13 of the Regulation VIII of 1819 dealt with reasons for allowing under-tenures means of staying the sales. There were four parts of this section (reproduced below); the first one detailed the reason why the under-tenants should be provided with the scope for staying the sale; the second one showed the means how the under-tenants might stay the sale; the third one described the procedure in case of amount lodged being rent due from the under-tenant himself and the fourth one dealt with the situation when the amount lodged was being advanced from private funds.

The section ran as follows:

'13. First—With reference to the injury that may be brought upon the holder of a *taluk* of the second degree by the operation of the preceding rules, in case the proprietor of the superior tenure purposely withholds the rent due from himself to the Zamindar, after having realised his own dues from the inferior tenantry it is deemed necessary to allow such *talukdars*

the means of saving their tenures from the ruin that must attend such a sale, and the following rules have accordingly been enacted for this purpose.

Second—Whenever the tenure of a *talukdar* of the first degree may be advertised for sale in the manner required by the second and third clauses of section 8 of this Regulation for arrears of rent due to the Zamindar, the *talukdars* of the second degree, or any number of them, shall be entitled to stay the final sale, by paying into court the amount of balance that may be declared due by the person attending on the part of the Zamindar on the day appointed for sale; in like manner they shall be entitled to lodge money antecedently, for the purpose of eventually answering any demand that may remain due on the day fixed for the sale, and, should the amount lodged be sufficient, the sale shall not proceed, but after making good to the Zamindar the amount of his demand any excess shall be paid back to the person or persons who may have lodged it.

Third—If the amount so lodged shall be rent due by the inferior *talukdar* to the holder of the advertised tenure, the same shall be stated at the time of making the deposit, and the amounts shall be carried to the account of the tenant or tenants lodging it, and be deducted from any claim of rent that may at the time be pending, or be thereafter brought forward against him or them by the proprietor of the advertised tenure, on account of the year or months for which the notice of sale may have been published.

Fourth—If the person or persons making such a deposit, in order to stay the sale of the superior tenure, shall have already paid the whole of the rent due from himself or themselves, so that the amount lodged is an advance from private funds and not a disbursement on account of the said rent, such deposit shall not be carried to credit in, or set against, future demands for rent, but shall be considered as a loan made to the proprietor of the tenure preserved from sale by such means, and the taluk so preserved shall be the security to the person or persons making the advance, who shall be considered to have a lien thereupon in the same manner as if the loan had been

made upon mortgage; and he or they shall be entitled, on applying for the same, to obtain immediate possession of the tenure of the defaulter, in order to recover the amount so advanced from any profits belonging thereto.'

If the defaulter shall desire to recover his tenure from the hands of the person or persons who, by making the advance, may have required such an interest therein, and entered on possession in consequence, he shall not be entitled to do so, except upon repayment of the entire sum advanced with interest at the rate of twelve percent, per annum, upto the date of possession having been given as above, or upon exhibiting proof, in a regular suit to be instituted for the purpose, that the full amount so advanced with interest has been realised from the usufruct of the tenure.

The case reports detail several situations developed on this issue. A dar-patnidar or any other tenure-holder, whether his name was registered in the Zamindar's *sherista* or not, might protect the *patni* from sale by paying the amount of arrears. But a tender to stay a sale under Regulation VIII of 1819 must be of the whole of the Zamindar's rent, and without any condition as to its being kept in deposit by the Collector (*Ram Charan V. Dropomoyi*)[69]. Where it appeared that a sum of money, sufficient to liquidate the arrear, was lying in the Collector's treasury at Birbhum where the plaintiff expected the sale would be held. An order had been obtained from his Court of the Sudder Amin of the district for the sum in question to be paid to the Zamindar, but the sum had not reached the Collector of Burdwan previous to sale. *Held* that there was no such tender made as, under the Regulation, would entitle the defaulter to have the sale stayed (*Kali Kishen Mukherjee and others V. The Maharajah of Burdwan and others*).[70]

It was settled that the Collector need not register his name as Manager, Court of Wards, before selling patni. A *patni taluk* under the Burdwan Raj was advertised for sale for arrears of rent by order of a Collector who was in temporary charge of the Burdwan Raj estates. The *darpatnidars* deposited the amount due in order to save the *taluk* from sale, and the

Collector ordered that they should be put in possession under Clause 4 of this section. An appeal was preferred to the Commissioner against the sale by the *patnidars*, who contended that they were not bound to pay the *patni* rent to the Collector as his name was not registered as proprietor or manager and that consequently he could not sell the *patni* for default. The *darpatnidars* had, therefore, no valid reason for depositing the arrear, and had no right to be put in possession on account of their having deposited it. Their appeal was rejected, the Board agreed with the Commissioner and observed that the Collector need not register his name as proprietor.[71]

Defaulting *patnidar* had to pay before the date of sale if he did not contest the arrears. On the date of sale, if there was any balance outstanding and the Zamindar insisted upon a sale, the Collector must sell. If the *patnidar* decided to contest he could pay on the date of sale when the lot was put up. *Talukdars of the second degree*, on the contrary, who wished to stay the sale by paying the amount of balance was to do so before the lot was called up.

If the undertenant was himself in arrears, the amount deposited by him would go towards the satisfaction of his rent. In a suit by the purchaser of a *patni* against a *darpatnidar* for arrears of rent of the year 1285 (1878), it appeared that, before the plaintiff's purchase, the *darpatnidar* had paid the amount of arrears of *patni* rent for the year 1284 (1877), in order to save the *patni* from being sold under Regulation VIII of 1819, and the amount so paid considerably exceeded the *darpatni* rent due at the date of the suit. *Held* that the defendant was entitled to deduct from the rent claimed the amount paid in excess of the *darpatni* rent due upto the end of 1284 (*Nabogopal Sircar V. Srinath Bandopadhya*).[73]

If the under-tenant was not in arrears and has already paid his full rent, the amount lodged was considered to be an advance from private funds for which a statutory lien arises in favour of the person making the advance ; and he was entitled on applying for it, to obtain immediate possession of the tenure in order to recover the amount so advanced from the profits.

Section 171 Cl. (e) of the Bengal Tenancy Act, lays down a similar provision. It provided that 'he shall be entitled to possession of the tenure or holding as mortgagee of the tenant, and to retain possession of it as such until the debt, with interest thereon, has been discharged.' The difference between this section and Cl. 4, S. 13 of Regulation VIII of 1819 was pointed out by the Judges in the case of *Ramnarain Routh V. Lall Dass Routh*.[74] 'Clause 4 of Sec. 13 of the Patni Regulation,' they observed, 'provides that if an under-tenant of the second degree makes a deposit to stay the sale of the superior tenure, and, he is not himself in arrears, the deposit shall be considered as a loan to the proprietor of the tenure preserved from sale, and the tenure so preserved shall be security for the advance, and the depositor shall be entitled, on *applying for the same*, to obtain immediate possession of the tenure of the defaulter in order to recover the amount so advanced from any profits belonging thereto. Apart from the fundamental distinction that under Sec. 13 of the Patni Regulation a deposit can be made only by an under-tenant, whereas under the Acts of 1865, 1869 and 1885, a deposit can be made by any person interested in the tenure of the holding, it is worthy of notice that Cl. 4 of S. 13 of Regulation VIII of 1819 expressly provides that the depositor shall be entitled upon application to obtain immediate possession of the tenure or holding as a mortgage of the tenant. It is impossible to say that this alteration of language was not intentional. In our opinion, the effect of this change is to make it no longer obligatory upon the execution court to place the depositor in possession, of the tenure or holding saved from sale.'

The mortgage must be of the entire tenure, when a *sepatnidar* paid the amount due from the darpatnidars, he had a mortgage over the whole-tenure which cannot be divided in proportion to the interests of the *darpatnidars*.

The amount, advanced by an under-tenant to stay the sale, was to be liquidated from the profits of the tenure. The word "profits" in the 4th clause of the section meant that which was left to the tenure-holder (*patnidar*) after payment of the rent of

the tenure (*patni*). A person who entered into possession of a *patni* as mortgagee under the provisions of this section, could not appropriate the whole of the collections to the satisfaction of his own claim. He was bound in the first place to pay the rent, due to the landlord, out of the gross collections before applying the same to the liquidation of his own debt, and the defaulter was not to be liable for the rent of the tenure during the period of the possession by the person so holding it as mortgagee. (*Lala Bhairab Chunder V. Lalit Mohon Sing*).[75] "The District Judge", remarked the Judges, "drew a distinction between 'profits' and 'net-profits', but we consider that in this section the meaning is what the District Judge terms 'net profits'. For, the section gives the plaintiff the right of possession only for the purpose of recovering the amount advanced by him as described in the earlier part of the clause ; and it goes on to provide that the defaulter may recover the tenure by repayment of the entire sum advanced with interest at the rate of 12 per cent per annum upto the date of the possession having been given as above, or by proving in a regular suit that the full amount so advanced with interest has been realised from the usufruct of the tenure. It thus seems clear to us that the law does not contemplate that the defaulter is also to be held liable for the rent of the tenure during the period of the possession of him who holds it under a mortgage.'

The under-tenant could not be ousted until the debt was paid off (*Bhaisnab Chandra Bhadro V. Tara Chand Banerjee*).[76] The lien is extinguished as the debt was paid off. No order of the collector was necessary in this behalf, nor was a regular suit *essential* to alter the legal position of the parties. The moment the lien was extinguished, the defaulter became entitled to recover possession. (*Tukhomull Mehea V. Saroda Prosad Dey*).[77] "It was suggested", observed Mukherjee, J., in this case, 'that it would be necessary for the patnidar, who has been deprived of possession, to bring a regular suit to recover possession ; and stress was laid upon the concluding words of the last paragraph of S. 13 in which it is stated that the defaulter shall not be entitled to recover his tenure except upon repayment of the

entire sum advanced, or upon proof in a regular suit to be instituted for the purpose that the full amount advanced has been realised from the usufruct of the tenure. It does not appear to me to be a reasonable construction of this section to hold that in every case there must be a regular suit by the defaulter against the usufructuary incumbrancer. I am unable to hold that the legislature precluded the possibility of the defaulter obtaining amicable possession from the holder of the usufructuary lien after the dues of the latter have been satisfied.'

The urgency for revenue and for the protection of the Zamindar were the main concerns of the Regulation VIII of 1819 and the section 14 was a typical example. Sale of the patni could not wait ; the only reason which could stay it was the total payment of the defaulting rent. The first para stated as follows : —

'14 First—Should the balance claimed by a Zamindar, on account of the rent of any under-tenure, remain unpaid upon the day fixed for the sale of the tenure, the sale shall be made without reserve, in the manner provided for in sections 9 and 10 of this Regulation ; nor shall it be stayed or postponed on any account, unless the amount of the demand be lodged.'

If there was any objection, a suit would lay for its reversal, 'It shall, however, be competent to any party desirous of contesting the right of the Zamindar to make the sale, whether on the ground of there having been no balance due, or on any other ground, to sue the Zamindar for the reversal of the same, and upon establishing a sufficient plea, to obtain a decree with full costs and damages.'

Darpatnidar must pay to the court, and the *patnidar* must pay to the Zamindar (*Kristo Mohon Shaha V. Aftabuddin Mahomed*).[78] The Board of Reuenue also had laid down the following rule on the subject : Collectors should not receive payment of arrears due from patnidars. Such payments should be made to the Zamindars direct, except when a *patnidar*, a *talukdar* of the first degree, contests the demand of an arrear made by the Zamindar, in which case deposit must be accepted

to stay the sale. This ruling did not affect the *darpatnidars*, who came under the provisions of Cl. 2 of Sec. 13.[79]

Defaulter could apply for summary investigation, but sale would not be stayed unless the amount claimed was deposited. The second part of section 14 ran as follows :

'Second—In cases also in which a talukdar may contest the Zamindar's demand of any arrear, as specified in the notice advertised, such *talukdar* shall be competent to apply for a summary investigation at any time within the period of notice ; the Zamindar shall then be called upon to furnish his *kabuliyat* and other proofs at the shortest convenient notice, in order that the award may, if possible, be made before the day appointed for sale.

Such award, if so made, will of course regulate the ulterior process ; but, if the case be still pending, the lot shall be called up in its turn, notwithstanding the suit ; and if the Zamindar, or his agent in attendance, insist on the demand, the sale shall be made on his responsibility, nor shall it be stayed, or the summary suit be allowed to proceed, unless the amount claimed be lodged in cash, or in Government securities or in currency notes by the *talukdar* contesting the demand ; and if such deposit be not made, the alleged defaulter will have no remedy, but by a regular action for damages and for a reversal of the sale.'

A question was raised as to whether a Collector was competent to postpone the sale of a *patni taluk* for any period with the consent of the Zamindar. The Board ruled that the sales of *patni* tenures could not be postponed as the law was imperative on this point.[80] A Collector refused to stay the sale of a *patni taluk* on the ground that the agent of the Zamindar (who had previously insisted on the sale proceeding) asserted that he had received the balance, although he had not quitted the court or communicated with any one during the interval. The Commissioner justified the collector's action by quoting Cl. 2. of S. 14. The Board *held* that the Collector had acted illegally, and that, when the agent declared that he had received the balance, it was not for the collector to decide upon the truth or

falsity of the statement. It was sufficient that it had been made, and, on the strength of it, the sale should have been stayed.[81] Sale might proceed although there was a suit for the abatement of the rent claimed pending in tne Civil Court.[82]

What happened when the costs were demanded by the Zamindar ? If a Zamindar refused to accept payment of the arrears on the ground that the amount tendered did not cover his costs, and insisted upon the sale of the *patni tenure*, the collector was bound to sell on the Zamindar's responsibility, but there could be no doubt that the Civil Court would set such a sale aside. If, however, the Zamindar accepted the tender of the arrears, but called upon the collector to proceed with the sale on the ground that the costs had not been paid the collector should refuse to sell.[83] The collector could not refuse to abstain from sale on the ground of non-payment of expenses.[84]

A *patnidar* might apply for a summary investigation, at any time within the period of the notice, in cases where he might contest the Zamindars's demand of any arrear. It could be observed, however, that although this investigation was held in a summary suit, the sale was not to be stayed till that suit was decided. (*Kistomohan Shaha V. Aftaboodeen Mohomed*).[85] A collector postponed the sale of a *patni* tenure, pending the decision of a summary suit brought by the *patnidar* contesting the Zamindar's claims. The Board rules that the collector was not competent to postpone the sale, and to decide the summary suit after the date fixed for the sale. As no award had been given on the day of the sale and the case was still pending, the collector had no option but to proceed with the sale on the Zamindar insisting on the demand and on his (Zamindar's) responsiblity, as the amount claimed had not been lodged by the patnidar as required by Cl. 2 of Sec. 14. If the collector was of opinion that the sale could not proceed because the Zamindar did not file the *patnidar's kabuliyat*, the case ought to have been struck off on the day of the sale [86]

If the sale had actually taken place, the only remedy open to a *patnidar* was to bring a suit for a reversal of the sale and for damages. The grounds, on which a sale might be set aside,

were the non-publication or irregular publication of the notice or any other cause e.g. want of arrears. If there was no arrear of rent at the date of the sale, whether notice of the fact had been given to the Collector or not, the sale must be set aside. If it appeared that there was no arrear the court was to take care that the purchaser was indemnified against loss accruing by reason of the sale being in consequence set aside (*Sarup Chandra Bhowmik V. Rajah Pertab Chunder Singh.*)[87]

An unregistered defaulter or an unregistered cosharer of a defaulter could bring suit to set aside the sale (*Gossain Mongal Dass V. Roy Dhunpat Singh Bahadur*).[88] In *Chunder Pershud Roy V. Subhadra Kumari Shaheba,*[89] where the plaintiff, an unregistered proprietor of a *patni* tenure, sued to set aside a *patni* sale, held under Regulation VIII of 1819, in consequence of certain irregularities, it was ruled that he was entitled to sue for a reversal of the sale under the provisions of Sec. 14 of the Regulation. "It seems to us", observed the judges, 'that the words 'any person desirous of contesting the right of the Zamindar' are wide enough to include a person in the position of the plaintiff who is interested in the maintenance of the tenure which he holds,..... It seems to us that, although the Zamindar is not bound to recognise any one except the registered tenant in any proceedings taken with reference to any matter connected with the tenure, it is nevertheless upon to any person interested in that tenure, or as the law puts it, 'desirous of, contesting the right of the Zamindar', to sue him on account of any illegal act by which his rights may have been affected in respect to that tenure. If it were not so, a neglect to register might entail an absolute forfeiture.'

The question as to the exact position of an unregistered *patnidar* in such cases was discussed in *Joy Krishna Bandopadhyaya V. Sarfannessa,*[90] and Petheram, C. J. who delivered the judgement of the court, observed : 'An objection is made as to the form of the decree and the objection is that the decree, in effect puts an unregistered assignee in possession. That may or may not be the case, but what the parties are entitled to, after this sale is set aside, is that they are entitled to be reinstated in

the same position as they were in before ; and if, as a matter of fact, the assignee was in possession as before, it may be that, so far as the landlord is concerned, his possession was only the possession of the assignor ; but if he was in possession by some arrangement with the *patnidar*, I think he is entitled to have the sale set aside, and that the effect of setting aside the sale will be that the parties must be reinstated in their original position. If he was in possession before, he will be in possession again ; but until he is registered, he cannot be in possession as a tenant to the Zamindar. His possession will be that of a *patnidar*, whether jointly with him or under some arrangement with him ; but his rights are to be reinstated in the position he was in before the sale took place.'

The Zamindar as well as the purchaser was a necessary party in a suit for the reversal of sale. If the sale be set aside by the Civil Court, the Zamindar was liable to pay full costs and damages and also to indemnify the purchaser against all losses thus where a patni sale was set aside under Sec. 14 of Regulation VIII of 1819, it was observed that an auction-purchaser was entitled to be indemnified, and he was not indemnified if he simply got back his purchase money without interest. It was *held*, therefore, that he was entitled to get back the purchase money with interest (*Bejoy Chand Mahtab V. Amrita Lall Mukherjee*).[91] Similarly, where a *patni* sale was set aside on ground that no notice is required by the Regulation, had been served, and the lower appellate court had refused to make an order for the refund of purchase money, the High Court, in special appeal and with reference to Sec. 14 Cl. I of the Regulation, declared the purchaser entitled to a refund with interest (*Mobarak Ali V. Ameer Ali*).[92] Again, where the sale of a *patni* for default was reversed on the ground of the notice not being served properly as required by the law, the purchaser was held to be entitled, under Sec. 14 to a refund of his purchase money and to recover his costs from the Zamindar (*Baikanta Nath Sing V. Moharajadheraj Mahatab Chand Bahadur.*)[93] Finally, where a Zamindar sold a *patni* tenure arrears of rent and the sale was afterwards set aside the purchaser was under Reg. VIII of 1819,

required the Court to compel the Zamindar to indemnify him on account of all payments of rent, which he might have made and if he did not do so, he could not set in his loss in answer to a liability which he had incurred (*Tarachand V. Nafar Ali*).[94]

What was the position of the *patnidar* when the sale was set aside ? When the sale of a *patni* was set aside and the *patnidar* was restored of possessions, he was liable to pay for the rent of the period during which he was out of possession. A *patni* was sold under Reg. VIII of 1819, the *patnidar* was ousted and the purchaser put into possession. The sale was subsequently set aside, and the Zamindar brought a suit for the recovery of rent, on the *patnidar* being restored to possessions. *Held* that, upon the settling aside of the sale and the restoration of the *patnidar* to possession, he took back the estate subject to the obligation to pay the rent and the arrears claimed must be taken to have become due in the year in which the restoration to possession took place (*Rani Sornomoyee V. Soshimukhi*).[95]

So also in *Dhunpat Sing V. Saraswati Misrain*[96] which was a suit by a Zamindar against his *patnidar* for arrears of *patni* rent for the year 1294, 95 and 96, it appeared that *patnidar* had been out of possession during a portion of that period and that the Zamindar himself had been in possession, having purchased the tenure at a sale held in proceedings instituted by him under the Regulation. It appeared, however, that the sale had been set aside, owing to the proceedings having been instituted against the predecessors of the *patnidar* who was then dead, and thereupon the Zamindar gave notice to the patnidar to retake possession, which he accordingly did. During the time the Zamindar was in possession, he himself collected some of the rent. The Lower Court dismissed the claim for rent for the period during which the plaintiff was so in possession on the ground that he was wrong doer and tresspasser and that, consequently, the defendant could not be held liable for the rent during that period. The High Court, however, *held* that there was no reason for refusing the plaintiff a decree for such arrears, as upon the authority of the decision in *Rani Sornomoyee V. Soshimukhi Burmonia.*[97] The plaintiff could not be treated as

a tresspasser, and that he was entitled to recover the actual arrears outstanding for the period in question, but not the interest thereon.

Where, however, there is a substantial interference by the landlords with the tenants' enjoyment of his tenure even though there was no complete eviction, and the interference was not *bona fide*, the tenant was entitled to a suspension of the rent for the period during which there was such interference (*Mahomed Jeaullya Mea V. Sukheannessa Bibi.*[98] In this case J the auction-purchaser of a *darpatni* with power to annul incumbrances had served notice to quit on the *se-patnidars* who refused to yield possession. On J attempting to take forcible possession, criminal proceedings ensured, as a result of which the *se-patni* was attached under Sec. 145 of the criminal procedure code on the 3rd October, 1902. The land attached was subsequently let out to an *ijaradar* who paid rent to the *patnidar* and deposited certain sums as *ijara* rent in the collectorate. Some of these sums deposited were withdrawn by J as *darpatnidar*. In 1906, the *se-patnidar* obtained a decree establishing their *se-patni* title, and, in pursuance of that decree withdrew some of the *ijara* rents that were deposited in the collectorate. In a suit for rent by J against the *se-patnidar* for the period during which the property was under attachment, it was *held* that the circumstances constituted substantial interference by the landlord with the tenants' enjoyment of the tenure as disentitled him to recover rent for their period, and that on the facts of the case, it was not such *bona fide* interference without prejudice to the tenant as would entitle the landlord to receive rent.

It was on the ground of *mala fide* dispossessions that this case was distinguished by the judges from the case of *Rani Sornomoyee V. Soshimukhi Burmonia.*[99] They said, 'It has been contended on behalf of the plaintiffs (appellants) that, in attempting to take possession of the *se-patni*, they were acting in the *bona fide* belief that they had a right to do so, and that they were justified in so beleiving as they had purchased the dar-patni tenure at a sale in execution of a decree for rent due

thereon, and the sale certificate expressly empowered them to annul all incumbrances. In support of this condition, reliance has been placed on the case on *Rani Sornomoyee V. Soshimukhi*.[100] In that case, the Zamindar was held entitled to recover from the patnidar rent for the period during which the latter was out of possession in consequence, no doubt, of the initial act of the Zamindar in putting in force, through the medium of the collector, the summary provision of the Reg. VIII of 1819, for recovery of arrears of rent, but the distinction between that case and the present one is that in that case the Zamindar, when he applied to the collector for sale under the Regulation pursued the legal remedy provided in that behalf, though in doing so, he inadvertently omitted some of the formalities prescribed by it, whereas in this case the plaintiffs, on being resisted by the defendants, attempt forcibly to take possession instead of resorting to a Court of Law for redress. The direct result of this unlawful act was that the defendants were thrown out of possession by the Magistrate. There is a further distinction, in that, in the Privy Council case, the *Patnidar* recovered the whole of the profits of the patni for the period during which he was out of possession, whereas, in the case before us, the *patnidars* received a very small portion of the profits of the four years during which they had been kept out of possession.'

When the sale of a *patni* was subsequently set aside, the Zamindar was entitled to rent from the *patnidar* for the period intervening between the sale and its reversal. If the *patnidar* had been dispossessed by the auction purchase during this period he would be entitled to mesne-profits from the latter (*Amrita V. Bejoy Chund Mahtab*).[101] However, where a landlord without any justification refused to treat the purchaser as his tenant and deliberately omitted to implead him as a party in the suit for rent, the whole of which had accrued due after the transfer and was payable by the transferee, it was not open to the landlord to treat the purchaser as a tenant, and make him liable for the rent that accrued due between the date of institution of the previous suit and the sale in execution of the decree

made thereunder (*Govinda Sundar Sinha Chowdhuri V. Srikrishan Chakravarti*).[102]

After the sale was complete, there were some formalities to pass over which were detailed out in Sec. 15.

It ran as follows :

'15. First—So soon as the entire amount of the purchase-money shall have been paid in by the purchaser shall receive from the officers conducting the sale a certificate of such payment.

The purchaser shall then proceed with the certificate in question to procure a transfer to his name in the *cutcherry* of the Zamindar, and, upon furnishing security, if required, to the extent of half the *jama* or annual rent, he shall receive the usual *amaldastak*, or order for possession, together with the notice to the raiyats and others to attend and pay their rent henceforward to him.

The Zamindar shall also be bound to furnish access to any papers, connected with the tenure purchased, that may be forthcoming in his *cutcherry*, and should be in any manner delay the transfer in his office or refuse to give the orders for possession, notwithstanding that good and substantial security shall have been furnished or tendered on requisition, the new purchaser shall be entitled to apply direct to the collector ; and he shall receive the orders for possession, and shall be put in possession, of the lands by means of the nazir, in the same manner as possession is obtained under a decree of court : provided, however, that if the delay be on account of the Zamindar's contesting the sufficiency of the security tendered, the rule contained in section 6 of the Regulation shall be observed.

Second—When the new purchaser shall proceed to take possession of the lands of his purchase, if the late incumbent himself, or the holders of tenures or assignments derived from the late incumbent, and intermediate between him and the actual cultivators, shall attempt to offer opposition or to interfere with the collections of the new purchaser, from the lands composing his purchase, the latter shall be at liberty to apply immediately to the collector for the aid of the public officers in obtaining possession of his just rights.

A proclamation shall then issue under the seal and signature of the collector declaring that the new incumbent having, by purchase at a sale for arrears of rent due to the Zamindar acquired the entire rights and privileges attaching to the tenure of the late *talukdar*, in the state in which it was originally derived by him from the Zamindar, he alone will be recognised as entitled to make the zamindari collections in the mufussil, and no payments made to any other individual will, on any account, be credited to the raiyats or others in any suit for rent or on any other occasion whatever when the same may be pleaded.

Third—Should the late incumbent or his late under-tenants continued to oppose the entry of the new purchaser, notwithstanding the issuing of such a proclamation, or should there be reason to apprehend a breach of the peace on the part of any one, the aid of the police-officers and of all other public officers who may be at hand and capable of affording assistance shall be given to the new purchaser, on his presenting a written application for the same ; and in the event of any affray or breach of the peace occuring, the entire responsibility shall rest with the party opposing the lawful attempt of the purchaser to assume his rights.

About disposal of the proceeds of the sale the 17th section provided the guidelines. One per cent was to be carried to the account of the Government, and the Zamindar's balance and expenses were to be paid next. Arrear rent would include interest also (*Maharajadhiraj Bejoy Chand Mahtab. V. S. C. Mukherjee*).[103] Surplus sale proceeds was the property of the defaulter. *Se-patnidar* was not entitled to be paid from the sale proceeds. Creditors were, however, bound to refund if the sale was set aside.

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43. 15 W. R., 481
44. 1 C. L. J., 579
45. 11 W. R., 160
46. 2 W. R., P. C. 13
47. 11 W. R., 11
48. I. L. R., 4 Cal., 800 ; 4 C. L. R. 6
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TABLES OF RELEVANT COURT CASES

Abdool Aziz Biswas Vs. Radha Kanta Kabiraj, I.L.R., 5 Cal., 226

Abdool Hosein Vs. Lal Chand Mahaton, 13 C.L.R., 313 ; I.L.R., 10 Cal., 36

Abdul Hamid Vs. Mohini Kanta Shaha, 4 C.W.N., 508

Abdulla Vs. Umed Ali, 6 W.R., 321

Abhai Charan Vs. Sashi Bhusan Basu, I.L.R., 16 Cal., 155

Abhai Kumar Sen Vs. Bejai Chand, I.L.R., 29 Cal., 813

Abhiram Goswami Vs. Shyama Charan Nundi, I.L.R., 36 Cal., 1,003 (P.C.)

Adam Vs. Briggs Iron Company, 7 Cushing, 361

Adoo Meah Vs. Shiboo Sundari, 22 W.R., 295

Afsuroodden Vs. Musst. Shorashi Bala, Marsh, 588

Ahsanullah Khan Bahadur Vs. Hari Charan Mozumdar, I.L.R., 20 Cal., 86 ; 17 Cal., 474

Ahsanullah Khan Bahadur Vs. Tirthabasini, I.L.R., 22 Cal., 680

Akhoy Kumar Vs. Maharajah Bejoy Chand, I.L.R., 29 Cal., 813 ; 6 C.W.N., cclix

Akhoy Kumar Chattopadhaya Vs. Mahatap Chand Bahadur, I.L.R., 5 Cal., 24

Alimoddin Vs. Sabir Khan, 8 W.R., 60

Ambika Debya Vs. Pranhari, 14 B.L.R., 77 (F.B.) ; 13 W.R., 1 (F.B.)

Ameenuddin Vs. Khyroonnessa, 20 W.R., 59

Amrita Vs. Bejoychand Mahatab, 1 C.L.J., 77n.

Amrita Lall Bagchi Vs. Jotindra Nath Chowdhry, I.L.R., 32 Cal., 165

Ananda Lall Mukherjee Vs. Kali Prasad Misser, 20 W.R., 59

Andrew Vs. Larimore, 1 Hay., 309 ; 2 Ind. Jur., O.S., 4

Annada Charan Rai Vs. Kali Kumar Rai, I.L.R., 4 Cal., 89

Annada Pershad Panja Vs. Prosonnomoyi Dassi, 11 C.W.N., 817 ; I.L.R., 34 Cal., 711

Annoda Vs. Brskine, 12 B.L.R., 370 ; 12 W.R., 68

Bhowani Charan Chuckerbutty Vs. Land Acquisition Deputy Collector of Bogra, 7 C.W.N., 130
Bhuban Vs. Girish, 13 C.L.J., 339
Bhuggwan Chunder Dass Vs. Suddr Ali, I.L.R., 4 Cal., 41
Bibi Jarad Kumari Vs. Hanifuddin Akan, 14 C.W.N., 389
Bibi Sohodwa Vs. Maxwell Smith, 20 W.R., 139
Bidhu Mukhi Debee Vs. Nilmoni Sing Deo, 1 C.L.R., 464
Bindubashini Dassi Vs. Horendro Lall Roy, I.L.R., 25 Cal., 305
Bipra Dass Dey Vs. Raja Ram Bandopadhya, 13 C.W.N., 650
Bipro Dass Pal Chowdhury Vs. Kumar Sonat Chandra Singh, 11 C.W.N., 161n.
Bishonath Sircar Vs. Rani Sornomoyi, 4 W.R., 5
Bishumbhur Vs. Durga, S.D.A., 1858, p. 369
Bissonath Chunder Vs. Radha Kista, 11 W.R., 554 ; 1 Hay, 339 ; Marshal, 113
Bonomali Roy Vs. Jagat Chandra Bhowmic, I.L.R., 32 Cal., 669
Bootee Sing Vs. Moorat Sing, 20 W.R., 478
Brindaban Chandra Chowdhury Vs. Brindaban Chandra Chowdhury Sircar, L.R., II.A., 178 ; 13 B.L.R., 409 ; 21 W.R., 324
Brij Kumar Roy Vs. Dhanukidhari Raut, 10 C.W.N., 976
Brojendro Vs. Krishna, I.L.R., 7 Cal., 684
Brojendro Kumar Vs. Upendro Narain, I.L.R., 8 Cal., 706
Brojendro Kumar Rai Vs. Rakhal Chandra Rai, I.L.R., 3 Cal., 791
Brojo Kishori Vs. Muhammad Salim, 10 W.R., 151
Brojonath Pal Chowdhury Vs. Hira Lall Pal, 1 B.L.R., A.C. 87 ; 10 W.R., 120
Brojo Nath Sing Vs. Srimati Bhagabati Dassi, 1 W.R., 133
Brojo Sundari Vs. Patik Chandra Roy, 17 W.R., 407
Bunwari Lall Chowdhury Vs. Barnomoyi Dassi, I.L.R., 14 Cal., 749
Bunwari Lall Roy Vs. Mohima Chunder Koonal, W.R., 267
Bunwari Mukunda Deb Vs. Bidhu Sundar Thakur, 12 C.W.N., 459

Bykunt Vs. Monee, S.D.A., 1850, p. 89

Chandra Sakai Vs. Kali Prosunno Chuckerbutty, I.L.R., 23 Cal., 354
Chander Kumar Rai Vs. Peary Lall, 6 W.R., 190
Chhnder Nath Nundi Vs. Hur Nnrain Deb, I.L.R., 7 Cal., 153
Chander Pershad Roy Vs. Subhodra Kumari Shaheba, I.L.R., 12 Cal., 622
Chandermoni Vs. Debendranath, Marsh, 420
Chander Monee Vs. Shumbhoo, W.R. Sp., 270
Chandra Kumar Roy Vs. Kedarmoni Dasi, 7 W.R., 274
Chandy Prasad Vs. Shubhadra, I.L.R., 12 Cal., 622
Collector of Rajshahie Vs. Hara Sundari Debi, W.R., Sp., Act X, 6
Chooramoni Vs. Howrah Mills Company, I.L.R., 11 Cal., 696

Damodar Roy Vs. Nimanund Chuckerbutty, 15 W.R., 365
Darimta Debiya Vs. Nilmoni Sing Deo, 15 W.R., 180
David Vs. Ramdhon Chatterjee, 6 W.R., Act X, 97
Dayamani Debi Vs. Srinibash Kundu, I.L.R., 33 Cal., 842
Days Ram Vs. Bhobindur Narain, S.D.A., 1806, p. 139
Deanatullah Vs. Nazar Ali Khan, 1 B.L.R., A.C., 216 ; 10 W.R., 341
Deen Doyal Vs. Jogeshwar, Marsh., 252
Dhanpat Singh Vs. Saraswati Misrain, I.L.R., 19 Cal., 267
Dhunendro Chundro Mukherjee Vs. John Watson Laidloy, 20 W.R., 400
Dhunput Sing Doogur Roy Bahadur Vs. Sheik Jowahurally, 8 W.R., 152
Digbijoy Neogi Vs. Jadub Chander Thakur, 8 W.R., 181
Din Dayal Paramanick Vs. Radha Kishori Debi, 8 B.L.R., 536 ; 17 W.R., 415
Dinendra Vs. Tituram, I.L.R., 30 Cal., 301 ; 7 C.W.N., 810
Dinomonee Banerjee Vs. Gyrutullah Khan, 2 W.R., 138
Doorga Nath Roy Vs. Ram Chandra Sen, I.L.R., 2 Cal., 341 L.R., 4 I.A., 52
Donbijoy Mahton Vs. Prithee Narain Sing, 14 W.R., 30
Doya Chand Vs. Anund Chunder, I.L.R., 14 Cal., 382

Durgacharan Vs. Ananda Moyee, 3 W.R., 127
Durga Charan Surma Vs. Syed Najumoddin, 21 W.R., 397
Durga Prosad Bandapadhya Vs. Brindaban Roy, I.L.R., 19 Cal., 504
Durga Prosad Vs. Bindabun, 15 W.R., 274
Durga Prosad Bandopadhya Vs. Brindaban Roy, I.L.R., 19 Cal., 504
Dwarka Nath Vs. Bhowance Kishore, 8 W.R., 11
Dwarka Nath Chuckerbutty Vs. Bhowani Kishen Chuckerbutty, 8 W.R., 11
Dwarkanath Vs. Harish Chandra, I.L.R., 4 Cal., 925
Dwarka Nath Vs. Srigopal, 5 W.R., 240

Earl of Jersey Vs. Guardians of Poor, 22 Q.B.D., 555
Eastern Mortgage Agency Company Vs. Rai Ganpat Sing Bahadur, 9 C.W.N., 22 (S.N.)
Ebbs Vs. Boulnois
Eman Ali Mistri Vs. Atar Ali Khan, 22 W.R., 133
Enayet Hossein Vs. Bibi Khoobunnissa, 9 W.R., 246
Erskine Vs. Trilochan Chatterjee, 9 W.R., 518
Eshan Chandra Kar Vs. Madhab Chundra Ghose (unrep.)
Eshan Chunder Mozumdar Vs. Hnrrish Chandra Ghose, 21 W.R., 137

Faiz Rahaman Vs. Ram Sukh Bajpai, I. L. R., 21 Cal., 169
Fatik Chandra De Vs. Foley, I. L. R., 15 Cal., 492
Fatima Vs. Collector of Tipperah, 13 W. R., 433
Fox Vs. Mackreth, 2 R. R., 55
Fukeer Vs. Hills, 8 Sel. Rep., 153

Gangadhar Sircar Vs. Khaja Abdul Aziz, 14 C. W. N., 128
Gandoo Mahata Vs. Nilmonee Singh Deo, 1 C. L. J., 526
Girish Chunder Vs. Hem Chunder, 2 C. L.J., 21n ; 5 C. L.J., 28
Girish Chunder Mandal Vs. Durga Dass, I. L. R., 5 Cal., 494
Golam Ali Vs. Kali Krishna, I. L. R., 7 Cal., 479 ; 8 C. L. R., 517
Goluk Moni Vs. Haro Chunder, 8 W. R., 62
Gopal Chunder Vs. Umesh Narain, I. L. R., 17 Cal., 695

Gopal Chunder Chuckerbutty Vs. Udoylall Dey, 10 W. R., 115
Gopal Krishna Soor Vs. Madanmohan Halder, 2 W. R., 188
Gopanund Jha Vs. Lalla Govind Pershad, 12 W. R., 109
Gopendra Chandra Mitter Vs. Mokaddam Hossein, I. L. R., 21 Cal., 702
Gopendra Chandra Mitter Vs. Tara Prosunno Mukherjee, I. L. R., 37 Cal., 598
Gopi Mohon Vs. Hill, 5 C. L. R., 33
Gooroo Das Vs. Issur Chunder, 22 W. R., 246
Gossain Mongal Dass Vs. Babu Roy Dhunput Singh, 25 W. R., 152
Gosto Behari Pyne Vs. Shib Nathe Dutt, I. L. R., 20 Cal., 241
Gouree Sunkar Roy Vs. Anund Mohan Moitro, 9 W. R., 487
Gouri Kanta Bhattacharjee Vs. Raj Krishen Nath, 5 W. R., 106
Gouri Lall Sing Vs. Judisthir Hazra, I. L. R., 1 Cal., 359
Gour Mohan Vs. Ananda, 22 W. R., 295
Gour Mohun Roy Vs. Radha Raman Sing, 21 W. R., 372
Govind Vs. Rungo, I. L. R., 6 Cal., 60
Govind Chandra Bose Vs. Alimoddin, 11 W. R., 160
Govind Lall Vs. Chand Haree, I. L. R., 9 Cal., 172
Govinda Nath Shaha Chowdhury Vs. Surja Kanta Lahiri, I. L. R., 26 Cal., 460
Govind Sahai Vs. Sibdut Ram, I. L. R., 33 Cal., 878
Govinda Sundari Sinha Chowdhury Vs. Srikrishna Chakravarti, 10 C. L. J., 538
Gudadhur Dass Vs. Dhanput Singh, I. L. R., 7 Cal., 565
Gulamali Vs. Gopal Lall Thakur, 9 W. R., 65
Gunga Vs. Dam Ram Narayan, 7 W. R., 183 (F. B.)
Gyanada Kanta Roy Bahadur Vs. Bromomoyi Dassi, I. L.R., 17 Cal., 162
Gya Ram Mandal Vs. Gya Ram Naik, Wy, Rent Rep., 51

Hanooman Proshad Sing Vs. Musst. Babooee Munraj Konwaree, 6 M. I. A., 393
Harak Chand Vs. Bejoy Chand Mahtab, 2 C. L. J., 87 ; 9 C. W. N., 795

Harak Chand Babu Vs. Charu Chandra Singh, 15 C. W. N., 15 ; 3 C. C. L., 81
Hara Narayan Vs. Wooma Charan, 19 W. R., 169
Haran Chandra Ghoose Vs. Guru Charan Sircar, 14 W. R., 421
Hara Prasad Vs. Sheodayal, I. L.R., 26 Cal., 55 ; L. R., 3 I. A., 285
Hara Sundari Vs. Gopi Sundari, 10 C. L. R., 550
Hargovind Vs. Damante, 13 W. R., 304
Hari Charan Basu Vs. Ranjit Singh, 1 C. W. N., 521 ; I. L. R., 25 Cal., 917
Hari Dass Goswami Vs. Nistarini Gupta, 5 C. L. J., 30
Harihar Mukherjee Vs. Tincourie Dassi, 6 W. R., 170
Harinarain Mozumdar Vs. Mukund Lall Mandal, 4 C. W. N., 814
Hari Narain Singh Deo Vs. Sriram Chakravarti, I. L. R., 33 Cal., 54 ; 3 C. L. J., 59
Harish Chandra Rai Vs. Collector of Jessore, I. L. R., 3 Cal., 712
Haro Krishna Banerjeee Vs. Joy Krishna Mukherjee, 1 W. R., 299
Haro Kumar Ghose Vs. Kali Krishna Thakur, I. L. R., 17
Haronath Rai Vs. Golok Nath, 19 W. R., 18
Haro Prosad Rai Vs. Gopal Dass Dutt, I. L. R., 3 Cal., 817 ; I. L. R., 9 Cal., 250
Harris Vs. Ryling, 5 M. & W., 60 ; 52 R. R., 632
Hasan Ali Vs. Mehdi Hossein, I. L. R., I All., 533
Hayes Vs. Horendro Narain, I. L. R., 31 Cal., 698
Hayes Vs. Rudranund Thakur, I. L. R., 34 Cal., 381
Hemadri Nath Khan Vs. Ramani Kanta Roy, I. L. R., 24 Cal., 575
Hem Chandra Chowdhurani Vs. Kali Prosunno Bhaduri, 8 C. W. N., 1
Hem Chunder Vs. Surnomoni, I. L. R., 22 Cal., 354
Hemenra Nath Mukherjee Vs. Kumar Nath Roy, I. L. R., 32 Cal., 169
Hem Nath Dutt Vs. Ashgar Sirdar, I. L. R., 4 Cal., 894

Henry Buckland Vs. Ashoo Chowdhrain, 9 W. R., 326
Hill Vs. Iswar Ghose, W. R., F. B., 156
Hira Lal Pal Vs. Nilmoni Pal, 20 W. R., 383
Hridoy Nath Dass Chowdhury Vs. Krishna Prasad Sircar, 11 C. W. N., 497
Huro Mohan Giree Vs. Durga Charan Rai, 15 W. R., 319
Huro Nath Gupta Vs. Jagannath Roy Chowdhury, 11 W. R., 87
Huro Sundari Dossya Vs. Kishen Monee Chowdhurani, 13 W. R., 257
Hurrodoyal Roy Chowdhury Vs. Mahamad Gazi Chowdhury I. L.R., 19 Cal., 699
Hurry Kisto Roy Vs. Motee Lall Nundee, 14 W. R., 36

Ishan Vs. Chandra, I. L. R., 6 Cal., 70
Ishan Chandra Kar Vs. Madhab Chandra Ghose (unreported)
Ishan Chandra Mitra Vs., Ram Ranjan Chakravarti, 2 C.L. J., 25
Ishan Chandra Rai Vs. Ashanullah, 8 B. L. R., 537n ; 16 W. R., 79
Ishan Chandra Rai Pandah Vs. Tarini Prosad Ghose, 2 Sevestre's Rep., 84
Ishan Chandra Sirkar Vs. Beni Madhab Sircar. I. L. R., 24 Cal., 62
Ishan Chunder V. Basaruddin, 5 C. L. R., 132
Ishar Chandra Datta Vs. Ram Krishna Dass, I. L. R., 5 Cal., 902 ; 6 C. L. R., 421
Issur Chandra Chuckerbutty Vs. Bistoo Chunder Chuckerbutty, 12 W. R., 32
Iswar Chunder Vs. Bistu Chunder, 3 B. L. R., App. 79

Jadoo Vs. Nabo, 3 W. R., 2
Jadoo Nath Pal Vs. Prosunno Nath Dutt, 9 W. R., 71
Jadoo Nath Shah Vs. Jadab Chandra Thakoor, 11 W. R., 294
Jadub Chander Thakoor Vs. Ghola Nath Singh Roy, 5 W. R., 51
Jaikrishna Mukherjee Vs. Collector of East Burdwan, 1 W. R., 26 (P. C.) ; 10 M. I. A., 15

Kishori Raman Kapuria Vs. Ananta Ram Laha, 10. C· W. N., 270
Kisto Jiban Bakshi Vs. A. B. Mackintosh, W. R. SP., 53
Kisto Kamini Chowdhurani Vs. Gopi Mohan Ghose Hazra, I. L. R., 15 Cal., 652
Kisto Mohan Shaha Vs. Abtabuddin Mahomad, 15 W. R., 560
Komol Lochon Dass Vs. Dwarka Nath Chowdhury, 10 W. R., 254
Koontee Debee Vs. Hridoy Nath Durreepa, 16 W. R., 206
Koylash Chandra Banerjee Vs. Kali Prosunno Chowdhury, 16 W. R., 80
Koylash Chunder Vs. Jabur Ali, 22 W. R., 29
Kripamayi Vs. Durgagobind, I. L. R., 15 Cal., 89
Krishna Ghandra Bose Vs. Mohendro Nath Bose, 13 C. L. J., 212 ; 3 C. C. L., 410
Krishna Chander Sen Vs. Sushila Sundari Dassi, I. L. R., 26 Cal., 611
Krishna Kinkar Dutta Vs. Mahanta Bhagwan Dass, 2 C.W.N., 161
Kristo Mohan Shaha Vs. Aftaboodeen Mahomed, 15 W. R., 560
Kumar Bunwari Mukunda Dev Vs. Bidhu Sundon Thakur, 12 C. W. N., 459
Kumar Dinendra Vs. Tituram, I. L. R., 30 Cal., 801 ; 7 C. W. N., 810
Kumar Keshab Chandra Roy Vs. Brindaban Chandra Maitra, 14 C. W. N., 601
Kupil Rai Vs. Radha Porsad Sing., I. L. R., 5 All., 261

Lachman Rai Vs. Akbar Khan, I. L. R., 1 All., 409
Lachimipat Singh Vs. Sadatulla Nasya, I. L. R., 9 Cal., 698, 12 C. L. R., 382
Lakhi Narain Vs. Khetra Pal, 13 B. L. R., 146 (P.C.)
Lakhinarain Mitter Vs. Seetanath Ghose, 6 W. R., Act X, 8
Lakhi Priya Chowdhury Vs. Rama Kanta Shaha, I. L. R. 30 Cal., 440
Lakhi Priya Debya Vs. Brindaban Dey, 12 W. R., 313

Lala Vs. Hira Singh, I. L. R., 2 All, 49
Lala Bhairab Chunder Vs. Lalit Mohon Roy Sing, I. L. R., 12 Cal., 185
Lala Jyoti Prokash Nandi Vs. Jogendra Narain Roy, 11 C. W. N., 52n
Lalan Moni Vs. Sona Moni, 22 W. R., 34
Lalit Mohan Roy Vs. Benodai Debee, I. L. R., 14 Cal., 14
Lalit Mohan Shaha Vs. Srinibas Sen, I. L. R., 13 Cal., 331
Lall Sabil Vs. Goodur Khan, 22 W. R., 187
Latfunissa Begum Vs. Kowar Ram Chandra, S. D. A., 1849, p. 371
Loke Nath Ghose Vs. Jagabandhu Roy, I. L. R., 1 Cal., 297
Lokenath Vs. Jagabandhu, I. D. R., 1 Cal., 297
Lukhee Narain Vs. Sita Nath, 6 W. R. Act X, S
Lukhi Narain Mitter Vs. Khetra Pal Singh, 15 W. R., 125 ; 20 W. R., 380 (P. C.) ; 13 B. L. R., 146, 2 P. C. R., 903
Luhhmee Vs. Collector of Rajshahie, S. D. A., 1851, p. 116

Mabatulla Nasyar Vs. Nalini Sundari Gupta, 2 C. L. J., 377
Mackenzie Vs. Haji Syed Mahomed Ali Khan, I. L. R., 17 Cal., 469
Madhabanand Vs. Joy Kumari, 3 W. R., 201
Madhab Ram Vs. Doyal Chandra Ghose, 2 C. W. N., 108 ; I. L. R., 25 Cal., 445
Madhu Sudhan Koondoo Vs. Ram Dhan Ganguli, 12 W. R., 383 : 3 B. L. R., 431
Madhu Sudhan Sing Vs. E. G. Rooke, I. L. R., 25 Cal., 1 (P.C.) ; L. R., 6 C. W. N., 433
Madon Mohon Shaha Vs. Sookomoyee Chowdhrani, W. R., Sp., Act X, 109
Mofazzul Hossein Vs. Basid Sheik, I. L. R. 34 Cal., 36 ; 4 C. L. J., 485 ; 11 C. W. N., 71
Mofizuddin Sirdar Vs. Ashutosh Chuckerbutty, 14 C. W. N., 352
Mohanand Sahai Vs. Musst. Sayedunessa, 12 C. W. N., 154
Moharini Dasya Vs. Horendro Lall Rai, 1 C. W. N., 458
Mohendro Ram Tewari Vs. Ram Krishna Rai, 10 C. W. N., ccliii

Mohesh Chandra Chakladar Vs. Gangamoni Dasi, 18 W. R., 59
Mohesh Chandra Banerjee Vs. Ram Prosunno Chowdhury, I. L. R., 4 Cal., 539
Mohim Chunder Mozumdar Vs. Jotirmoy Ghose, 4 C. L. R., 422
Mohinee Vs. Juggobondhu, W. R., Sp. 382
Mohiooddeen Mahomed Vs. Ram Kishore Koondu, 22 W. R., 311
Mohun Lall Babu Vs. Udai Narain Bhaduri, 14 C. W. N., 103
Molook Chand Vs. Modu Sudan, 16 W. R., 126
Mongal Dass Vs. Balu Roy Dhanpat Sing Bahadur, 22 W. R., 152
Monmohini Dassi Vs. Musst. Bishen Moyi Dassi, 7 W. R., 112
Monmotha Nath Dey Vs. G. Glascott, 2. W. R., 275
Moti Lall Ghose Vs. Bisheshwar Hazra, 3 C. W. N , 60
Moti Lall Sing Vs. Sheik Omar Ali, 3 C. W. N. 19
Moteram Vs. Bhivraj, I. L. R., 20 Bom., 745
Mritanjai Sarkar Vs. Gopal Chandra Sarkar, 2 B. L. R., A. C., 131 ; 10 W. R., 466
Mukund Chunder Roy Vs. Pran Kishen Pal Chowdhury, W. R., Sp., 287
Mukund Lall Pal Vs. Lehuraux, I. L. R., 20 Cal., 379
Mungazee Chuprasi Vs. Shiba Sundari, 22 W. R., 369
Mussamat Vs. Luckeemoni, S. D. A., 1850, p. 349
Musst. Mesraw Vs. Girja Nundun Tewary, 12 C. W. N., 857

Nadiar Chand Shaha Vs. Miajan, I. L. R., 10 Cal., 820
Nafar Chand Pal Chowdhury Vs. Rajendra Lall Goswami, I. L. R., 25 Cal., 157
Nagendra Nath Pal Chowdhury Vs. Chandra Sekhar Dalal, 5 C. L. J., 59
Nanda Kumar Vs. Lakhi Priya, 23 W. R., 36
Naimuddin Vs. Girirh Chandra Ghose, 5 C. W. N., 124
Narainuddin Vs. Srimanta Ghose, I. L. R., 29 Cal., 219
Narayan Chandra Kansabanik Vs. Kashishwar Roy, 1 C. L. J., 579

Narendro Narain Choudry Vs. Ishan Chandra Sen, 22 W. R., 22 ; 13 B. L. R., 274
Nidhi Kisto Vs. Nistarini, 21 W. R., 386
Nil Madhub Karmakar Vs. Shiboo Paul, 13 W. R., 410
Nilmoney Roy Vs. James Hills, 4 W. R., Act X, 38
Nilmoni Rai Vs. Hills, 4 W. R., Act X, 38
Nilmoni Singh Vs. Annoda Prosad, 1 B. L. R., 97 (F. B.) ; 10 W. R., 41 (F. B.)
Nilmoni Singh Vs. Messrs. Gordon Stuart & Col, 9 W. R., 371
Nilmoni Singh Deo Vs. Saroda Prosad Mukherjee, 18 W. R., 434
Nitya Gopal Sen Vs. Mani Chandra Chakrabutty, 12 C. W. N., 63
Nitya Nund Hazra, Vs. Maharajadhiraj Bijoy Chand Mahtab, 7 C. L. J., 593
Nobin Chunder Vs, Nobin Chunder, 23 W. R., 46
Nobin Chunder Vs. Taylor, I. L. R., 4 Cal., 103
Nobin Krishna Mookherjee Vs. Shib Prosad Patak, 8 W. R., 96
Nobo Durga Dassi, Vs. Nobo Koomar Roy, 5 W. R., 232
Nobogopal Sircar Vs. Srinath Bandopadhya, I. L. R., 8 Cal., 877 ; 11 C. L. R., 37
Nobo Keshore Vs. Hari Nath, I. L. R., 10 Cal., 1102
Nobo Kishen Vs. Sreeram, 15 W. R., 255
Nobo Kishur Biswas Vs. Jadub Chunder Sircar, 20 W. R., 426
Noffer Ali Vs. Rameshwar, 3 C. L. R., 28
Nogendro Chandra Ghose Vs. Munsruff BiBi, 15 W. R , 17
Norendra Kumar Ghose Vs. Gora Chand Joddar, I. L. R., 33 Cal., 683 ; 3 C. L. J., 391
Nukoo Roy Vs. Mahabir Persad, 11 W. R., 405
Nunda Lall Mukherjee Vs. Kymuddin Sardar, 9 C. W. N., 886

Obhoy Ram Jana Vs. Syed Mahomed Hossein W. R., Sp., 213
Okhoy Kumar Chatterjee Vs. Mahtab Chand Bahadur, 22 W. R., 299

Parbati Charan Deb Vs. Ainuddin, I. L. R., 7 Cal., 577
Pasupati Mahapatra Vs. Narayni Dasi, I. L. R., 24 Cal., 537; 1 C. W. N., 519

Woomesh Chundra Gupta Vs. Rajnarain Roy, 8 W. R., 444 ; 10 W. R., 15
Woomesh Chandra Roy Vs. Esan Chandra Roy, S. D. A., 1859, p. 1198

Zaheeruddin Vs. Campbell, 4 W. R., 57
Zohoorul Huq Vs. Guru Charan, 15 W. R., 329

INDEX

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