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Calcutta High Court

Case No: Special Appeal Nos. 1116 of 1862 and 253 of 1863

Asadunnissa Bebee		APPELLANT
	Vs	
Mahomed Akil Deshkar Roy Vs Muttylall Sen Gwyal		RESPONDENT

Date of Decision: Dec. 14, 1867

Judgement

Macpherson, J.

In these cases, there are two questions to be decided. The one is whether a grant by a zamindar of a portion of his estate to be held free of rent is a grant void as against the grantor and those claiming under him; the other is whether a similar grant made by a maurasidar is void as against the grantor and those claiming under him. The lands, which are the subject of discussion in the first of the two cases before us, were granted on the payment of sums of money to the grantor--were in fact sold. Whether the lands were given for a valuable consideration or otherwise does not, however, as it appears to me, materially affect the questions the Court has to decide; for whether sold or given, the conclusions at which I arrive will be the same.

2. The contention on behalf of the respondent is that, under S. 10 of Regulation XIX of 1793, such grants are null and void, and the lands may at any time be resumed by the grantor or those holding under him.

3. I shall first consider the case of grants by a zamindar. It is admitted, and is beyond dispute, that, although by Regulation XLIV of 1793 (passed contemporaneously with Regulation XIX of that year), a zamindar could not make a valid lease for a period exceeding ten years, still he was not, by that or any other law, under any restriction whatever as to the amount to be reserved by him on any lease he might make. Whatever might be the amount of Government revenue payable by the zamindar, the lease, if not for a period in excess of the prescribed limit, would be valid, although but a nominal rent were reserved. By Regulation V of 1812, the restriction as to the length of lease was removed; and from that time (to which the grants now under consideration are subsequent) a zamindar or other proprietor of land was

competent to grant leases for any period he pleased, and for any rent, whether nominal or not, which he pleased. It is argued that, although when the grants (the effect of which the Court has now to determine) were made, the grantors might have given leases in perpetuity, and for a cowree or other nominal rent, which would have been valid and binding on their heirs and representatives, still the provisions of S. 10, Regulation XIX of 1793, are such that any gift or grant of any portion of the estate,--any absolute transfer of it,--whether for full valuable consideration or not, is invalid. It is said that the zamindar must always, when disposing of his lands, do so by way of lease, with a reservation of something, however small, in the way of rent, and that an absolute parting with his interest in any portion of his lands is void.

4. It appears to me that S. 10 of Regulation XIX is intended to apply to grants of 1 and to be held exempt from the payment of Government revenue, and that the meaning of it is that, when any attempt is made to dispose of lands, so that they shall be held as against the Government free from Government revenue, such attempt shall fail. The whole object of Regulation XIX of 1793 is to secure the Government revenue. The title declares it to be "a Regulation for trying the validity of the titles of persons claiming to hold lands exempt from the payment of revenue to Government; and for determining the amount of the annual assessment to be imposed on lands liable to the payment of public revenue."

5. S. 1, the preamble, recites that, by the old law, the Government was entitled to a certain proportion of the produce of every biga, and that, therefore, "if a zamindar made a grant of any part of his lands to be held exempt from the payment of revenue, it was considered void from being an alienation of the dues of Government;" for otherwise if such grants were upheld, obviously the revenue of Government would have been liable to gradual diminution. Further on the section recites that Government has declared void "all grants for holding land exempt from the payment of revenue" made without sanction since the Company''s accession, but that the Government had recognized and upheld certain grants made prior to the accession; that many grants existed which were invalid in reality; "that, therefore, the Governor-General in Council deemed it incumbent on him to recover the public dues thus alienated," as well as to "resume the revenues of all lands the grants for which might expire." It recites also that it had been enacted that the jumma assessed upon the estates of individuals was to be considered as exclusive of all existing lakhiraj lands, "whether exempted from the khiraj, or public revenue, with or without due authority," and that it was expressly stipulated in the proclamation declaring the decennial settlement permanent, that the Governor-General in Council would impose such assessment as he might deem equitable on lands alienated "and paying no public revenue," and held under an invalid title. The preamble continues that the Governor-General desires that the claims of the public on these lands shall be tried in the Courts of Judicature, "that no such exempted lands may be subjected to the payment of revenue," till the titles of

the proprietors have been adjudicated upon. Upon these grounds (the section concludes) and with a view to facilitate the recovery of the public dues from lands held exempt under invalid grants, as well as to prevent any similar alienation being made thereafter "to the prejudice of the security of the public revenue," and further that the Government officers employed in the collection of the public revenue may have a correct register of lands exempt from the payment of revenue, the rules contained in the subsequent sections of the regulation are enacted.

6. In this preamble I fail to see any indication of an intention to declare void grants of land free of rent payable to the zamindar. Throughout, it is the public revenue, and that alone, which is kept in view; and reading the preamble by itself, I should not hesitate to say that the only alienations complained of, and which it was desired to check, were attempts on the part of the zamindars to alienate their estates, so as to free them from the payment of Government revenue, not alienations free from rent payable to the grantor himself.

7. It is argued that the recital of the Government right to a quota of the produce of each biga shows that the Government, while enacting Regulation XIX, considered that it was then entitled to a quota from each biga. But the settlement was then made, and the Government in fact no longer had a right to more than the revenue reserved. The interest in each biga of land, which the Government originally had, ceased with the settlement, save that each biga belonging to the zamindari remained charged with the whole revenue payable in respect of the zamindari, the Government accepting in lieu thereof a fixed amount of revenue from the zamindar. I do not, therefore, consider that the mere fact of the Government having originally had a share of the produce of each biga is sufficient to lead to the conclusion that the preamble of Regulation XIX is to be read as referring to grants of land free of rent to the zamindar, as well as to grants of lands free of revenue to Government. To take away From the zamindari the right to grant his lands free of rent to himself and those churning under him, is such a restriction of, and detraction from, his rights (given to him by Regulation I of 1793, ss. 9 and 10), that it must be done distinctly and undoubtedly; and the law, when questions arise as between the grantor and the grantee, is certainly to be construed rather in favor of the validity of such grants than against them.

8. As the preamble, so I think the enacting sections of Regulation XIX, as well as the contemporaneous legislation of the Government, are all alike to be read as invalidating grants of lands free of revenue payable to Government, and not as invalidating grants free of rent to the zamindar.

9. I agree in much that is said by the late Levinge, J., in his judgment in the case of Piziruddin v. Madhusudan Pal Chowdhry Ante, p. 75, at pp. 97, 98, and many of his arguments, which I shall not here repeat, seem to me to be very pertinent. As Levinge, J., remarks, "A. grant of land, rent-free, by a proprietary does not more interfere with the revenue of the Government, or the position of the proprietor, than

a lease in perpetuity at a nominal rent of one rupee annually. This lease in perpetuity has just as much effect on the revenue (which is nothing) and on the income and resources of the zamindar, as a grant free of rent payable to the zamindar. Yet it is not disputed that the lease is binding on the zamindar and his heirs. But it is said the grant is not legal, because it is contrary to the Regulations and against the policy of the law, which will protect the zamindar from improvident alienations, though made on good consideration."

10. As to any reference to what is supposed to be the "policy of the law," it is clear that all that we, sitting here, have to decide is what the law actually is; we can have nothing to do with any so-called "policy" other than such policy as is to be found in the law itself.

11. The law was, in my opinion, correctly stated by Mr. Abercrombie Dick, one of the Judges of the late Sudder Court, in his judgment of the 18th July, 1855, in Ahmed Alee Khan v. Raja Modhnarain Singh S.D.A., 1855, 395 when he said:-- "I concur with the Principal Sudder Ameen that the grant is not resumable by the heirs of the grantor, and that S. 10, Regulation XIX of 1793, does not apply to the case. The law could not intend to declare that the party who had made the grant could at pleasure resume it, whether given for a valuable consideration or not, or intend to entitle the heirs of such grantor to resume. This would be authorizing such persons to repudiate their own acts and the acts of their ancestors. Grants of the nature in question, quoad the grantors and their heirs, affect not the public revenue. They affect merely their own rental. The grantor continues himself to pay the revenue, and if he do not, the estate is sold, and then the grant becomes null and void. The law (s. 10, Regulation XIX of 1793) was enacted to prevent alienations ''prejudicial to the security of the public revenue,'' not to enable proprietors and their heirs (whose ancestors'' acts are theirs) to profit by their own wrong. The proprietors and their successors, who are authorized to resume at pleasure, are not these who made the grants, or their hereditary ancestors. An auction-purchaser can annul grants and alienations. This, the law declares: All bond fide alienations are binding on those who made them, and on their heirs. This justice requires, and our precedents have decided."

12. Regulation XLXV of 1793 has been dwelt upon as showing that the intention of the Legislature must have been to render grants free of rent to the zamindar absolutely void. It is true that that Regulation recites the weakness or viciousness of the zamindars, and their tendency to grant pettas of their lands improvidently, so as to diminish "the resources of Government arising from the lands, in the event of the rent or revenue reserved by such proprietors being insufficient for the discharge of the amount of the public demand upon their estates;" and that it limited the period for which a lease could be granted to ten years. But s. 6 declares that nothing in the Regulation "shall be construed to prohibit any zamindar, &c., from selling, giving, or otherwise disposing of any part of his lands as a dependent talook;" and I cannot

understand how the fact of the Government having thought it necessary to limit the length of leases to ten years, while it did not think it necessary to provide for the reservation of a rent proportionate to the Government revenue, or any substantial rent at all, can be said to afford any logical argument in favor of the respondents.

13. The position of the holders of grants declared void by S. 10 of Regulation XXX is considerably altered by Act X of 1859, and the suits now in appeal before us were instituted after Act X of 1859 came into force. S. 28 of that Act, while it leaves untouched so much of the old law as declares grants for holding land exempt from the payment of revenue null and void, repeals that portion of it by which proprietor''s, &c., were authorized and required to collect the rents of such kind, to dispossess the grantee and to annex the land to the estate in which it might be situate, and declares that any proprietor, &c., who may desire to dispossess a grantee, &c., shall bring a suit before the Collector within twelve years from the time when the title of the person claiming the right to assess the land, or of some person claiming under him, first accrued. As the law now stands, there is merely a declaration that these grants are null and void, but no proprietor, &c., can of his own authority act on their being so; he must invoke the aid of the Revenue Courts. Whereas such grants were under the old law absolutely void, they now apparently are only voidable. And if they are only voidable, it may be doubted whether the grantor or those claiming through him will be permitted by the Courts to come forward in fraud of their own act and to set aside the grant.

14. S. 10 of Regulation XIX of 1793 expressly declares that "no length of possession shall be hereafter considered to give validity to any such grant." But it has been recently ruled by the Privy Council that, notwithstanding this declaration, sixty years'' undisturbed possession under such a grant does give validity as against the heirs of the grantor. This was in the case of Mussumut Chundra Bullee Debia vs. Luckhea Debia , in which suit a grant of land free of rent for the worship of an idol was sought to be set aside. The only point decided by the Privy Council is the one of limitation, and there is no decision of the general question of the right of the representative of a grantor to impeach the grant of such grantor.

15. On the whole, putting a reasonable construction upon S. 10, Regulation XIX of 1793, and ascertaining its meaning upon the principles indicated by their Lordships of the Privy Council in the case of Ranee Surnomoyee vs. Maharajah Sutteeschunder Roy, , I am of opinion that when a zamindar has granted a portion of his land free from rent, such grant cannot be set aside or rendered void by the grantor, or those claiming through him. Lands granted by a zamindar, whether he reserves any rent or not, must of course always remain liable for the Government revenue due in respect of the zamindari of which at the time of the grant they form part; but, as against the grantor, and those claiming through him, the lands will belong to the grantee free of rent payable to the zamindar, so long as the grant is not set aside by Government. The position of a grantee from a maurasidar may perhaps he stronger

than that of a grantee from a zamindar. It certainly cannot be weaker, and therefore it is unnecessary for me to go further into that question; for in holding that such a grant is good against the zamindar who made it, and those claiming through him, I necessarily also hold that such a grant, when made by a maurasidar, is good against him and those claiming through him.

16. As regards the written minutes or memoranda, in the nature of judgments, which have at various times been put into the hands of the Registrar of the Court by Trevor, Campbell, and the late Shumbhoonath Pundit, JJ. (who sat on the Bench when these appeals were argued, but who are none of them now members of the Court), I have no sort of doubt that none of these three minutes or memoranda can be treated as a judgment. I agree with the learned Chief Justice in the opinion which he has formed upon this question, and generally in the reasons upon which that opinion is founded.

L.S. Jackson, J.

17. The first question which we have to determine is that which has been adverted to by the Chief Justice, and which has also been specified in the notice that judgment would be delivered this morning,--that is, whether the minutes written by three Judges of this Court, who have retired, or are no longer members of the Court, should be looked on as judgments, and should therefore influence the decision to be given in these appeals. The Chief Justice has gone very fully into this point, and in the opinion which he has expressed, I believe all my learned colleagues have concurred, subject to such arguments as might be advanced this morning. I myself should have been inclined to go further and to regard that point as not open to argument. It has been suggested that it was the practice of the late Sadder Court, and is still to some extent the practice of the High Court, to hand into the office written judgments, instead of pronouncing them in open Court. If such was the practice of the late Sudder Court, I can only say that it was in direct contravention of the provisions of s. 359 of the Code of Civil Procedure. That section declares that the judgment of the Appellate Court is to be "pronounced in open Court;" and it proceeds to lay down what is to be contained in the judgment, and in what language it should be delivered. If, therefore, a judgment, instead of being pronounced in open Court was handed into the office, it must only have been by a species of fiction that the judgment so handed in was to be regarded as read by the Judges, they being present in Court on the day when it was put in, and able to read it if they had been so minded; and I am not aware of any instance in which a judgment or opinion written by a deceased Judge, or by a Judge who had left the Court, was treated as a valid judgment. The section I have quoted, it is true, does not apply to the High Court, because it is one of the sections which, by s. 5, Act XX of 1862, are declared not to apply to the High Court. I have however always understood that it was necessary in strict practice that judgments should be delivered and pronounced in open Court. Clearly, we are met to-day for the first and only time to give judgment

in these appeals; and it appears to me, beyond question, that Judges who have died, or have retired from the Court, cannot join in the judgment which is to be delivered to-day, and express their dissent from it. I myself would therefore exclude argument on this point; but as opportunity has been afforded to the pleaders to argue it, and none has been offered, I have therefore only to add that I concur entirely in the view which has been expressed by the Chief Justice on this point upon general principles.

18. Having had the opportunity of reading the judgment in these cases prepared by the Chief Justice, and being able very generally to adopt the conclusions and the reasons set forth in that judgment, so far as they boar upon the provisions of law referred to, and the cases cited before us, I consider that I am relieved from the necessity of going at such length as would be otherwise requisite into the considerations which lead me to an opinion in favor of the tenant, and against the right to resume. Nevertheless, I shall endeavour to state, as briefly as possible, those parts of the case on which I have long since arrived at an independent conclusion, and on which the view which I have originally formed has been in no degree shaken either by arguments at the bar, or by the reasons which have weighed with my learned colleagues who are of the contrary opinion.

19. The right for which the zamindar or the middleman contends in these cases, is the right to take out of the hands of a grantee or his representatives, lands given, by the person under whom the plaintiff claim?, to be held free from the payment of rent to the grantor and his heirs or assigns, whether such grant has been made for an adequate or inadequate consideration, or without any consideration at all in money. In neither case has the plaintiff offered, or the Court below compelled, repayment of the purchase-money or compensation of any kind, and indeed the plaintiff is represented as proceeding, not merely on his rights, but also upon his duty to the State, as being "required" by law to advance a claim, which is not the less imperative on him because it happens to be to his advantage. To any person who considers the subject originally, it must be startling to find that Courts of Justice could be asked, and yet more that they are found to sanction, demands of such manifest iniquity; and I am quite confident that none of my learned brethren who heard this appeal would have entertained the suit, unless compelled by the strongest pressure of positive legal enactment. It is clearly not on the policy of the revenue laws that the plaintiff can rely. Courts of law, it seems to me, have no concern with that abstraction. They have to administer either the specific rules of positive legislation, or those general principles of jurisprudence which govern the tribunals of all civilized countries. And in these cases accordingly, the plaintiff''s right is based on S. 10, Regulation XIX of 1793, which, as modified by s. 28, Act X of 1859, is said to enable the landlord to dispossess such grantees by a civil suit, or by summary proceedings before the Collector. If those provisions of law can be applied to such cases, and if the plaintiff can maintain his suit. It may be necessary to consider upon what terms the Court should allow him to undo that which he, or his ancestor, has done in the face of an enactment to which he, as well as the

defendant, was then, as now, under the obligation to conform.

20. Is then the defendant a person setting up "a grant to hold land exempt from the payment of revenue," whom the proprietor of the estate is bound, in "collecting the rents from such land, to dispossess (as grantee) of the proprietary right in the land, and to reannex it to the estate?" Does the defendant claim to hold his land free from the payment of revenue? Is he in the enjoyment of any proprietary right? And has the land ever been separated from the estate in which it is situate? I apply those tests to the language of S. 10, Regulation XIX, because I do not understand that s. 28, Act X of 1859, makes any alteration in the relative rights of zamindar and grantee, or affects the principle on which a grant would be void, but only that it takes away the power which the zamindar had of acting by his own right hand, and compels him to resort to the Collector or the Civil Court.

21. It is admitted that the first of these questions must be answered in the negative, unless it be considered that the farmers of Regulation XIX of 1793 (and it may be those also of Act X of 1859) said "revenue" when they meant to say "rent". I think the Chief Justice has sufficiently cleared the Legislature of 1793 from the charge of having either (contrary to its own expressed intentions) used the same words in two different senses, or employed two really distinct terms to denote the same description of thing. We may give a similar credit to the authors of Act X of 1859, and I think it needless to argue that question further.

22. On the second question, it seems to me quite clear that the defendant makes no claim to a proprietary right in the sense in which that term is understood by the Courts in India, and used in the Regulations of 1793. If he did, he would be situated in respect to the land comprised in his grant precisely as the zamindar himself with respect to the zamindar of the original estate, and would be entitled to a batwarra; but this could not be unless the proprietor conveyed to him out and out the whole of his rights, and sold the land as a portion of the estate, which indeed he would be fully competent to do, either by way of dependent talook under s. 6, Regulation XLIV of 1793, or in absolute ownership under s. 9, Regulation I of the same year. But the landlord did nothing of the kind; he merely conferred a right to hold the land free of rent to the proprietor, which grant, if not invalid by law, would bind the grantor, his heirs and representatives.

23. Then was the land dissevered from the estate? Most clearly not. It is admitted that the grant under consideration, if it be valid, binds only those who take under the grantor, and would be wholly inoperative as against a purchaser at a sale for arrears of Government revenue. But, if so, the land has never ceased to be a part of the estate, and cannot be reannexed to that from which it has not been severed.

24. It seems to me, therefore, abundantly clear that the grant impugned is not in any sense invalid under the terms of S. 10, Regulation XIX of 1793.

25. If arguments in support of this view and external to that provision of law be required, I think a most convincing one is to be found in the enactment S. 2, Reg. XLIV of 1793 afterwards repealed by Regulation V of 1812, which restricted the term of leases to be granted by proprietors to ten years; this rule being expressly framed to counteract the occasional improvidence of zamindars. To soy that the Legislature permitted, at first for ten years and afterwards without restriction, leases in which a peppercorn rent was reserved, subject of course always to the operation of the sale-laws, and that they indirectly forbid the grantee to hold free of rent to the proprietor, subject to the same contingency, is, in my opinion, to impute to the Government of that time an infirmity of purpose, and an inconsistency, of which we find no trace in its other legislative measures, and of which it is unjust to suppose it capable. It seems to me quite restrictive enough upon transactions relating to land, that bargains made with a proprietor for the time being are liable to be set aside in favor of an auction-purchaser under Act XI of 1859, if the lease or grant be not among the kind which are especially protected by the exceptions contained in s. 37. The fourth exception protects leases of lands whereon permanent buildings have been erected, or gardens, tanks, &c., have been made, but enables the landlord in certain cases to enhance; it gives no protection to leases in which the landlord may have reserved a trifling rent, receiving a larger sum of money to enable him to build factories, or make tanks or other works elsewhere for the benefit of the estate. And there may be sufficient reason for not allowing such questions to become the subject of decision by the Civil Court. This restriction, whether reasonable or not, is quite sufficiently burdensome, without further enabling zamindars, out of a superstitious regard for the laws to set aside their own acts, violate their own or their ancestors'' contracts, and resume what they have given, retaining at the same time that which they received in exchange.

26. But it is said that this grant is invalid for another reason, namely, that the State has an inalienable right to a portion of the produce of every biga of land in the country which is not expressly exempted under some valid title, and that, consequently, every grant which relieves a portion of land from the burthen which it ought to bear, is in contravention of the common law of the empire, and ought to be set aside. This argument in my opinion involves a very distinct and very serious fallacy. No doubt "by the ancient law of the country," as set forth in the well known preamble to Regulation XIX of 1793, "the ruling power was entitled to a certain proportion of the produce of every biga of land," subject however to this important reservation, "unless it transfers its right thereto for a term or in perpetuity, or limits the public demand upon the whole of the lands belonging to one individual, leaving him to appropriate to his own use the difference between the value of such produce and the sum payable to the public, whilst he continues to discharge the latter." Can any one doubt that, in cases of estates permanently settled, the State has given up in perpetuity its right to a "certain proportion of the produce of every biga," and has agreed to receive a sum commuted in satisfaction of the public demand upon the

whole of each permanently settled estate; or that the difference between the value of such proportion of the produce and the sum payable to the public, is the absolute property of the zamindar so long as he continues to discharge the latter? And is the zamindar less than other owners free to do what he will with his own? In other words, is not the zamindar, as long as he continues proprietor and pays the Government revenue assessed on his estates, absolute owner of the rents, being at liberty to collect or not, to enhance (if the nature of the tenure permit), or to abate, to collect by his own servants, to farm out the rents, to commute the payments, or to bind himself not to require any.

27. But for the security of the public revenue, it is a part of the law of the country that, with certain exceptions, the purchaser of an entire estate in the permanently settled districts sold under the sale-law, acquires it free from all incumbrances which may have been imposed upon it after the time of settlement. In this positive provision of law, it seems to me, and not in any theoretical rights of the estate, does the safety of the public revenue, and the security of the purchaser, consist. But, moreover, if any such principle existed, and the public revenue were at all endangered by such grants, who would be the party entitled to complain and to avoid the grant? Surely not the person who had himself created it, who had benefited himself while he undamaged or imperiled the interests of the State. I could conceive such an action as this brought by the Collector ne quid detrimenti res publica capiat. I could also, by an exertion of the fancy, imagine a case of such a grant made in ignorance of the law on both sides, and a proposal by the zamindar to set aside the contract and make mutual restitution; but to entertain a suit by the zamindar to replace him in status quo, while the grantee remained in neither one state nor the other, to decree a one-sided observance of the law, and not compel the landlord to restore that which he took under an illegal contract, this, I think, would be something like an abetment of fraud, which I should be sorry to require from any inferior Court in Her Majesty''s dominions.

28. For these reasons therefore chiefly I am of the same opinion with the Chief Justice; and in saying so I feel that, if one is safe in being on the game side with profound and careful study of the law relating to the subject under consideration, I have that security in the present case. I also refer, with particular satisfaction, to the cases cited--Guruchurn Paramanik v. Odayenarain Mundal 2 Sel. Rep., 281 and Baboo Modenarain, Singh v. Mussamut Ameeroonnissa Begum S.D.A., 1852, 967. I would answer the question put by the Division Bench in the affirmative, and would therefore reverse the decisions of the Courts below with costs.

29. Such arguments as I have employed are addressed to the case of a grant by the zamindar himself, and the case of a grant by a maurasidar or other middleman is, of course, even stronger in favor of the grantee.

Seton-Karr, J.

30. This case was argued on the 16th, 17th, and 18th of January 1866 before a Bench of nine Judges. After hearing full arguments of Counsel, and discussing the matter with several of my colleagues, I formed conclusions which I recorded on the 12th of March 1866; and from those conclusions I have not, after further and more mature consideration, seen any reasons to depart.

31. The question which we have to consider in this case is whether a grant for valuable consideration by a zamindar of a specific portion of land to be held without payment of rent is valid against the heirs of the grantor, or against subsequent purchasers by private sale. This question, simple as it is, appears to me to involve a consideration of the whole policy of the revenue laws regarding the burden imposed on land on behalf of the State, and the creation of rent-free tenures subsequent to the permanent settlement, quite as much as it involves any rights or privileges conceded to the zamindars of Bengal by that great measure.

32. The cases referred to us by the Divisional Bench in this instance comprise several grants. Grant No. 2 is for a tank excavated for the convenience of men and of cattle; and it appears to me that this grant ought to be governed by the decision of the majority of the Full Bench of the 9th of January 1865 In Piziruddin v. Madhusudan Pal Chowdhry, ante, p. 75, and that it must hold good against the heirs and successors of the grantor, or against any purchasers, save the purchaser at a sale for arrears of public revenue. The other grants numbered 1, 6, 7, 8, 9, 10 and 11 were all made for no particular purpose, and for consideration of Rs. 200, 100 and other sums, Some of the giants are of very small extent, being of a few bighas, but the greater or less size of the grant can hardly enter into our consideration. The real point at issue is, whether grunts made rent-free for land of any extent after the perpetual settlement can or cannot be avoided by the heirs of the grantor. The case of a purchaser at a public sale for arrears of revenue is not before us, nor is it raised in these cases in any way. It is quite clear to me that, as against such a purchaser, such grants would be utterly void, and I do not gather that any doubt is anywhere entertained on this point.

33. The lower Courts, relying on the late Sudder Court''s decision of the 18th July 1855 In Ahmed Alee Khan v. Rajah Modhnarain Singh, S.D.A., 1855, 395, have decreed the plaintiff''s claim for resumption, and have declared the land liable to assessment. This is the result in both the cases, Nos. 253 of 1863, and 1116 of 1862, referred to us. The great contention raised before us is the intent and meaning of Regulation XIX of 1793, and especially of S. 10 of that Regulation, as well as the meaning of the word "revenue" used in that law, and in several other enactments. After much consideration I am driven to the conclusion that the word "revenue" at that time was not invariably employed to mean only the revenue demandable by Government, but that it also practically comprised the rent receivable by the zamindar who was accountable for the revenue. No doubt in some of the sections of that law, and in the preamble, the term "revenue" is employed with special

reference to the demands of Government, but S. 10, which refers to grants made after the 1st of December 1790, appears to me to have little or no practical force, if the term "revenue" be confined or restricted to the demand on account of Government. The difficulty that I feel in restricting the term "revenue" to the Government demand only arises in some measure from the consideration that, after 1790, it was not very likely that persons should take on themselves to exempt any lands from the payment of revenue strictly so called. Further, rents were practically the source and nucleus of revenue. I admit that the exact meaning to be applied to this term is the source of perplexity, and that I had at times had some doubts on the subject; but, on the whole, I have now come to the conclusion that "revenue" in S. 10 was intended to include, and in litigation did include, the rents or the collections made by the zamindars from the ryots. Alienations of what the natives would term kharij, or land dues, were, by that section, declared absolutely null and void, if made by any one, or on any account, after December 1790. This view is, to my thinking, strongly confirmed by the preamble to Regulation XLIV of 1793, in which the rent or revenue reserved by proprietors is used apparently to designate one and the same thing. The preamble of this Regulation is important, as showing the views of the Government of the day in regard to the powers of zamindars under the permanent settlement (His Lordship read the preamble and continued). These are very weighty and significant words, and I contend that they strongly support the views which I have expressed above. This view also seems to be confirmed by the following passage from 2 Harrington''s Analysis, p. 58. In alluding to the report of Messrs. Anderson, Croft and Bogle of 25th of March 1778, the author says:-- "It is not perfectly accurate, especially in the indefinite use of the term rent as sometimes denoting the return or compensation for the occupancy of land paid by the immediate occupant or tenant to a superior landlord or his representative, and at other times signifying the public land revenue payable to Government." The same contention is farther countenanced by the language of the old Regulation, anterior to the Code of 1793 of the 1st of December 1790, and by Colebrooke''s Supplement to the Digest of the Regulations.

34. That this view right or wrong has had a practical effect given to it, can, I submit, hardly be denied. For, if the language of the first lines of S. 10 of Regulation XIX of the same year, 1793, could not have been held to refer to or include rents, it is not very easy to see under what law or Regulation, zamindars could resume and reannex, as they have done, grants of rent-free lands improperly set up or created after 1790. No one, as I have already observed, was very likely to alienate revenue, properly so called, after 1790; and looking to rents as the basis and foundation of revenue, I must conclude that this section has been applied so as to allow zamindars to resume grants made free of rent after a certain date, and thus to draw from every part of their estates a proper contribution to the fixed portion of revenue which they were bound to pay in to Government. This is really the construction which has been put on this section by our Legislature and our Courts for years. Possibly the

language of the law has not been very critically examined and tested at any time; but I think it will scarcely be denied that this is the one law to which all zamindars were accustomed to look for a series of years, as empowering them off-hand to reannex lands which any one claimed to hold rent-free, and that this was the view taken of the language of the Regulation by those who framed and passed Act X, and who, in rescinding S. 10 of Regulation XIX of 1793, and in passing instead s. 28 of the new law, clearly and unmistakably treated the enactment as the one by which zamindars were entitled to dispossess alleged grantees, and to assess their invalid grants with the proper amount of rent. In fact, if we exclude these laws, or treat them as exclusively applicable to the Government revenue and not to rent, it is not easy to see to what part of any Code zamindars could resort to claim their rights against parties who set up invalid and unauthorized rent-free titles on their estates. What again, I may ask, is the construction which has been put on that well-known Regulation II of 1819, s. 30? Have all zamindars, all the Courts, all authorities been wrong in allowing suits, not merely against, but by zamindars, to be instituted under that section for the resumption of rent-free grants for a long series of years? The first clause of that section is as follows (reads). It is impossible to deny that whether the language of the laws has been correctly interpreted or not, the interpretation has been that suits to avoid rent-free grants can be brought under it. This view has been acted on practically all over the Lower and Upper Provinces for a long series of years, and it seems to me too late now to set a different meaning to that which has had the seal of suitors and pleaders, of Courts and Judges, for more than fifty years. It may, in fact, be said that the zamindar has been regarded as the transferee of the rights of Government; and under the term "revenue" mentioned in the Regulations, he has been allowed to claim his "rents," of which all land-revenue is made up.

35. The next point, and an equally important point in this reference, is the policy of the revenue law. It appears to me wholly impossible, and indeed unjust, to discard a consideration of this policy if we can discover it. And on this point I have arrived at this conclusion that the deliberate policy of our whole revenue legislation has been against the creation of any such grants. The law so much quoted, S. 10, is clear against the alienation of revenue for such purposes. But even if it could be contended that rents are not included in the term revenue, the general policy of the State on this subject can be collected from other enactments; and to my mind, it is impossible to treat this question fairly without considering that policy. Landlords by Regulation XLIV of 1793, s. 2, were prohibited from making leases or engagements with their under-tenants or ryots for a term exceeding ten years: and this marked restriction was not removed until the year 1812. The whole theory of the revenue in Bengal, and I understand in Upper India, is that a certain proportion of the annual produce of every biga of land is due to the State; and if this be admitted, as it must be on all hands, then how can the zamindar deprive his heirs of the right to receive portions of produce from any distinct portion of land or number of bighas, without at the same time theoretically, and if the grants be of any size, in positive practice,

imperiling the realization of the dues of Government which are made up of such produce? The early writers on revenue, such as Shore, Harrington and others, support this view. The decisions of the Judges of the late Sudder Court, with the exception of that of Mr. A. Dick, who dissented from the judgment of the 18th of July 1855, seem to me to take up, and to act on, this view of the law, though the decisions are not very numerous. The decision in Piziruddin v. Madhusudan Pal Chowdhry Ante, p., 75 of our Full Bench of January 9th, 1865, does not finally rule more than that water is in the nature of the rent which the zamindar might receive from a tract otherwise barren and profitless. Water obviously is essential to the well-being, and even to the very existence, of the population; and the tank in that case was in several ways a benefit to the land, and a return to the zamindar.

36. It may be said on the other hand, that there is no difference practically as regards the security of the public revenue, between leases at pepper-corn rents, which any zamindar may legally create, and rent-free grants, which, in this view, he may not create. But, looking to possible and probable results, there is a difference and a somewhat substantial difference. In the case of land leased, at however low a rent, some record of the same must still be kept in the zamindar''s papers. The rent, if it were only one rupee for a large village, would still be collected, and traces would be found of the tenant who paid the rent. Land held absolutely rent-free is at once severed from the estate. All connexion between the two would cease, and in a few years all traces of the origin, size, and details of the grant might entirely pass away, or be only in the power of the grantee.

37. Lastly, it is a question whether, if the rent-free grant could not be created by a zamindar, it might be created by a maurasi talookdar, such as we have in the case before us, and be of force. In my opinion, we should not be justified in making any distinction between the two. If the zamindar cannot be permitted to imperil the security of the revenue, or to thwart the policy of the State by such creations, neither can a subordinate or under-tenant. In the event of a sale far arrears of revenue, the assets of the land which make up first rent, and ultimately revenue, might equally be frittered away or diminished, and the rights of Government might be equally injured, whether the alienation had been made by a subordinate tenant or by the superior landlord. The burden of the revenue falls on the land, and the law has laid it down that the land must not be cut down or impaired so as to become unable to meet this burden. If the zamindar cannot bind his heir in this way, neither ought any subordinate holder, whether of the putneedar class or of that of maurasidars and others.

38. S. 28 of Act X of 1859 has not altered the policy of the law. It has only changed the mode of procedure to which zamindars must resort. The alienations are still voidable by legal process, if any proprietor or former desires to avoid them. The only difference between this law and that of 1793 is, that the grants are not in the later law declared at once "null and void." It is no argument, to my mind, to say that there

is at present little danger of these alienations becoming general, and that liberal zamindars are not so easily found at this period of our social history to make presents of land to be held rent-free to venerable Brahmins, impoverished retainers, or respectable individuals whose fortunes and conditions are dilapidated and impaired. This is a consideration for the Legislature if it chooses to change its policy. The settlement of Lord Cornwallis was a wise and liberal measure; and in some points of view it deserves all the praise that has been lavished on it. But it must not be forgotten that, though the Legislature in express terms then declared the zamindars to be "the proprietors of the soil," their property so declared was somewhat essentially different from the real property of an English squire, with which we are familiar in England. The rights of ryots were, even in 1793, guaranteed and secured, valuable under-tenures were recognised and were made the subject of special legislation, and a positive restriction was laid on zamindars, as already pointed out, whereby their power of granting leases was limited to ten years. A disregard of these fundamental distinctions, a neglect to consider the policy of Lord Cornwallis as it affected, first the State, next the zamindar, and lastly the ryot, and a desire to apply the English law of real property to zamindaris in Bengal, would lead, in my opinion, to the most grievous confusion and to the most mischievous errors. If it be admitted that the Legislature of Lord Cornwallis prohibited zamindars expressly from making improvident leases, from creating under-tenures at a reduced rent or in perpetuity, and from permanently diminishing the resources of the Government (Regulation XLIV of 1793), is it in the smallest degree probable that the Legislature of that day would have quietly looked on, while zamindars so confined, so restricted, so tied down, so patriarchally dealt with, were making rent-free grants in all directions, and were thereby lessening the productive area of their estates.

39. It seems to me no reflection on the excellent Cornwallis policy to say that such proceedings could never have had its sanction or contemplation. All questions, therefore, which might otherwise arise as to the injustice or impropriety of the repudiation of the grantor''s acts or agreements by his heirs or assignees must be considered with, and be controlled by, considerations of public policy. And the arguments on this head in favor of the obvious justice of recognising such grants do not, in my opinion, apply to the case. For, let us for a moment consider what the results of permitting these alienations might be. Hitherto no hardship whatever has been inflicted on any one. Men who purchase rent-free grants, old or new, are perfectly well aware that all such grants have been treated hitherto with marked disfavor, and that the holders of them are liable to be called on at any moment to prove their title. They buy thorn, therefore with all the chances of having to prove the origin of their title, and, until the celebrated ruling in Khelat Chunder Ghose''s case, two years ago, of having to prove it under difficulties which lapse of time only strengthened and increased, But they are now to be told that, though old titles may be annihilated by the landlord suing in the Courts, new grants are to be recognized

and are absolutely binding on unwilling heirs and successors. Would not such a ruling give rise to endless attempts to create rent-free grants ostensibly in favor of deserving individuals, but in reality in favor of the zamindar himself. We all know the temptation to fraud and collusion held out by the benamee system unhappily so prevalent. And it appears to me, judging from past experience, that a ruling of this kind will only foster this spirit still more; that private purchasers might at some future day find an estate so stripped and denuded of its assets, that in despair they would have no resource but to allow it to go to the Collector''s sale. It is true that in such a case the grants would no longer be binding on the purchaser, but the purchaser would have much difficulty in tracing out the origin of these alienations, and in replacing himself in the position of the Government, as he would have an undoubted right to do. And it surely cannot be right to encourage such public sales for arrears of revenue. Yet it is to such a consummation that this practice, if recognised and generally acted on, would assuredly tend; for there would be no other way of avoiding these grants if, as between private vendor and purchaser, and ancestor and heir, they were upheld by the Courts. I cannot conceive in the present state and feeling of native society, that such permission would be widely used for really beneficent and praiseworthy purposes. I can easily conceive, on the other hand, scores of cases in which it would be used only for purposes of selfishness and fraud.

40. If rent-free alienations at this day are desirable, and are to become general, let the Legislature declare this by a new Act. If grants are required by any liberal and large minded individuals for a special purpose, such as a people''s park, let a private bill be introduced for that purpose in each case. We have to administer, however, the law as it stands; and looking to the language of the Statutes, to the broad policy of the whole perpetual settlement as it affects Government as well as the zamindars, to the general course of the decisions of the late Sudder Court, to the avowed and recognized treatment of this very question hitherto by the parties most interested in it, and to the probable confusion and evil consequences of new rent-free creations, I have no doubt now left that, though a zamindar for himself may decline to take rents from any one for his own lifetime, we ought to return to the Divisional Bench our answer to the effect that a new purchaser, public or private, is not bound by any such grants or remissions whether made from motives of real benevolence or from mere carelessness and neglect of interests.

41. The above is my written judgment on the main question; but I came here to-day hoping to bear some arguments as to the propriety or otherwise of admitting the three opinions which have been delivered by our colleagues, one of whom unfortunately has been removed by death, while the other two have retired from the Bench; and I should have been glad to have heard what could have been advanced on either side on the question as to the propriety or impropriety of regarding the opinions of my late colleagues as mere opinions; of looking on them either as final and conclusive judgments on the one hand, or as mere indications on

the other, of what turn their opinions in all probability would have taken.

42. I conferred with two, if not with all three, of my late colleagues, and certainly, as far as I can recollect, they appeared to have fully made up their minds on a subject which they had very seriously considered and on which they had had abundant opportunities of forming a final determination. I am, however, not prepared to say that they might not, on further consideration, have changed their opinions by the forcible arguments set forth by the Chief Justice and by others of my colleagues on the other side on this important subject, on which it is quite clear that we hold divergent and absolutely irreconcilable opinions. This, therefore, is one reason why I am disinclined to treat the opinions of my late colleagues as final. But there is another reason. I have had the advantage of reading what the Chief Justice has written, and I have conferred with some of my colleagues on the judicial practice of the highest and most authoritative tribunals elsewhere. There appears to be some uncertainty as to practice of delivering judgments by the several Division Benches. By some Benches all judgments are delivered orally; by others, they are sometimes pronounced orally and sometimes not; and by others again they are always put in on a stated day by the Judges forming each Bench without being read out at length in Court, while the Counsel and pleaders are briefly informed of the determination which has been finally come to on the various points in issue. But, on the whole, I cannot think that, in a case which has been argued before more than five, and in this case before nine, Judges, it would be right or seemly that one Judge should put in his own judgment without at least having read the judgments, or ascertained the opinions, of his brethren who sit with him on the Bench. No instance where this practice has been deliberately countenanced has been brought to our notice, and looking to the undoubted practice of the highest Courts in England, evinced in two or three celebrated instances of late, and to the propriety and the seemliness of judicial proceedings, I own with some regret that I am under the necessity of stating that, in my opinion, the minutes of my late colleagues are not judgments, and that they cannot and ought not to be so treated. I believe I am stating the unanimous opinion of the Bench, but I have thought it necessary to give, as concisely as I could, my reasons for concurring with my colleagues on this point.
Norman, J.

43. These cases were submitted by Division Benches in order to raise the question whether grants for valuable consideration by zamindars of specific portions of land to be held rent-free, and without payment of revenue, are valid as against the heirs of the grantor, or purchasers of the zamindari by private sale.

44. I am of opinion that the question must be answered in the negative. Counsel were heard on the 16th, 17th, and 18th of January 1867. Shortly after the argument, the Judges met to debate the question amongst themselves, and immediately afterwards, viz., on the 19th of March 1866, I wrote a judgment and sent it to the office of the Court. Five other Judges sent in their judgments at different dates. Of

the Judges who so sent in their judgments, one is dead, and two have left the Court. Speaking for myself, my judgment was intended for the perusal and consideration of my colleagues; if any one of them had suggested any modification of it, I should have been prepared to discuss the matter, and alter or add to it, or strike out parts of it, if, on further consideration it seemed proper or desirable to do so. The paper in that state was, in fact, a deliberative minute rather than a judgment. I concur with the Chief Justice in thinking that the papers sent in by Trevor, Shumbhoonath Pundit, and Campbell, JJ., cannot be treated as judgments.

45. The question submitted for our opinion turns on the construction of S. 10, Regulation XIX of 1793. By Regulation I of 1793, s. 1, certain "articles of the proclamation relative to the limitation of the public demand upon the lands, addressed by the Governor-General to the zamindars, independent talookdars, and other actual proprietors of land paying revenue to Government, in the provinces of Bengal, Behar, and Orissa," were enacted into a Regulation which was to have force and effect from the 22nd of March 1793, the date of the proclamation. (His Lordship read Arts. 1, 2, 3, & 8 and Art. 9 down to the 1st clause, and continued).

46. The case of grants by a zamindar of portions of his zamindari is dealt with by cl. 3 (reads). We have now seen that under Regulation I of 1793 it is declared that the jumma assessed, or to be assessed under the Regulations for the decennial settlement, is to be fixed for ever; that such zamindars, their heirs and successors will be allowed to hold their estates at such assessment for ever; that they are privileged to transfer to whomsoever they may think proper, by sale, gift, or otherwise, their proprietary right in the whole or any portion of their estates, without applying to Government for its sanction to the transfer; that such transfers will be held valid, provided "that they be not repugnant to any Regulations now in force, which have been passed by the British Administrations, or to any Regulation that they may hereafter enact." Rules are laid down for the apportionment of the fixed assessment charged on any estate on the division of it, or on a portion being transferred. The Governor-General requires that all such transfers as may be made by the private act of the parties shall be notified to the Collector, in order that the fixed jumma many be apportioned on the several shares, and the names of the proprietors charged herewith entered upon the public registers, and that separate engagements for the payment of the jumma assessed upon each share may be executed by the proprietors, who will thenceforward be considered as actual proprietors of the land. Then conies cl. 3: "When a zamindar shall transfer . . . . a portion of his estate to one person, the assessment thereof shall be fixed at an amount which shall bear the same proportion to its actual produce, as the assessment of the whole of the estate of the transferring proprietor, of which . . . . a portion may be so transferred, may bear to the whole of its produce."

47. It must be observed that S. 10 of Regulation I of 1793 provides for the case of divisions and transfers of portions of the estate. Where the parties to such divisions

and transfers omit to notify them to the Collector of revenue for the purpose of enabling him to apportion the fixed jumma on the several shares and to cause separate engagements to be entered into for the payment of the jumma assessed on each share, in such cases the whole of the estate is to be held responsible to the Government for the discharge of the fixed jumma as if no apportionment had taken place. Such is the effect of a mere omission to notify the transfer to the Collector.

48. That is not the case we have to deal with. The question proposed is as to the effect of a grant by zamindar to hold land rent-free, or, as it is expressed in the grants in the case before us, "lakhiraj." I understand by that, a grant of land to hold in absolute proprietary right, not only free from the payment of any rent in money, but without any dependence on, or duty to, the zamindar. When the grantee holds subject to the performance of any duty or conditions, the Regulations appear to treat him as a lease-holder, not as a person having an absolute ownership; see s. 7, Regulation VIII of 1793. Regulation XLIV of 1793, s. 8, shows that it is contemplated that, under certain circumstances, leases may be granted in perpetuity; in other words, that there may be a lease, though there is no reversionary estate in the lessor. Perhaps it is not very material whether the liability to perform the duty is strictly in the nature of rent or not. In a former case I stated my opinion that rent may be a payment in money or in kind, or may consist in a duty to be performed by the tenant. That is in accordance with the definition of the word "rent" by Lord Coke. It is the legal construction of a plain English word, a construction which has been put upon it in Courts of Justice from the time of the second Institute to the case of Doe d. Edney v. Benham 7 Q.B., 976 decided by the English Court of Queen''s Bench in 1845. I therefore at once lay aside cases like that of the grants of land for a tank, where, by the grant, the grantee holds subject to the obligation of permitting water to be taken by, or for the benefit of, the inhabitants of the zamindaris or their cattle. It seems to me that, in the Code of 1793, such persons are treated not as holding under grants, but as lease-holders.

49. I now come to the Regulation which we have to construe. The preamble of Regulation XIX of 1793 recites (reads). By cl. 2, grants for holding land exempt from the payment of revenue, made previous to the 12th of August 1765, are declared valid, provided the grantee actually obtained possession previous to that date, and has since held possession without having been subjected to the payment of revenue. By cl. 3, all grants for holding land exempt from the payment of revenue, made since the 12th of August 1765, and previous to [the] 1st of December 1790, by any other authority than that of Government, and which may not have been confirmed by Government, or by any officer empowered to confirm, them, are declared invalid. Cls. 4 to 9 contain provisions declaring who are to he deemed entitled to the proprietary rights and to the revenue of such last-mentioned lands, and for fixing the assessment thereon. Cl. 10 is as follows (reads). We have to consider what is meant by the expression "grants for holding land exempt from the payment of revenue that have been made since the 1st of December 1790, or that

may hereafter be made".

50. The first thing to be observed is that the Legislature is dealing with grants. By the term "grants," as here used, I understand grants of the absolute proprietary right in the soil, as distinguished from leases. Reading Regulations I of 1793,S. 10, and VIII of 1793, s. 5, cls. 2, 3, 4, and 5, it seems clear that those persons only who pay revenue are, under the Regulations, considered proprietors of the lands held by them. Leases are dealt with by a separate enactment (Regulation XLIV of 1793). If a zamindar makes a grant of the proprietary right in the land, and the object and meaning of the grantor and grantee, to be collected from the grant itself, is that the grantee should hold the land without payment of revenue, the case falls within the terms of the enactment.

51. Now there are two modes in which the grantee may hold subject to the payment of revenue, either by holding at a revenue assessed on the alienated share, and under engagement in respect thereof with the Government under s. 10, Regulation I of 1793, or by holding the land granted as a dependent talook, as provided for by Regulation I of 1793, s. 10. In this latter case, the Legislature contemplates that the revenue must be paid by the dependent talookdar through the zamindar. On referring to ss. 5, 6, and 7 of Regulation VIII of 1793, it appears that there are two classes of dependent talookdars: first, those who are owners of the soil, and pay revenue through the zamindar; and secondly, those who are considered as lease-holders only. Now, from S. 10, Regulation I of 1793, and the preamble, and s. 6 of Regulation XLIV of 1793, it is clear that a zamindar may create a dependent talook of either description; and if so, he can make a grant subject to the payment of revenue payable through himself. Regulation VIII also shows that a zamindar, after the decennial settlement, could make a grant exempt from the payment of revenue for a limited period. The definition of junglebooree talookdars in s. 8 is as follows:-- "The pottas 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, exempting him from payment of revenue for a certain term, and at the expiration of it subjecting him to a specific assul jumma, with all increases, abwabs, and mhatoots imposed on the pergunnah generally, &c."

52. From this and other passages, which may be cited, it is clear that the word "revenue" is not invariably used in the sense of public revenue collected directly by the Government.

53. It should also he observed that the words are "grants for holding land exempt from the payment of revenue." There may be a grant for holding land so exempt, although the grant has not the effect of exempting the land from liability to sale, should the grantor fail to pay the revenue, if the grant is one under which, as between grantor and grantee, the grantee is to hold free from the payment of revenue. The object of the enactment of S. 10, as stated in the preamble of the Regulation XIX, is not to prohibit grants releasing the revenue, or absolutely

exempting land from the payment of public revenue. Such, of course, are grants which none but the Government could make or affect to make. The expressed object was to prevent alienations, similar to those which had been previously spoken of, to the prejudice of the security of the public revenue. It has been suggested that the section must he read as if it were confined to alienations of land made by zamindars after 1790, and before the completion of the permanent settlement. But the preamble shows that the enactment was to protect "the public revenue which has been assessed in perpetuity upon the estates of individuals," not to secure the Government from loss in an assessment to be afterwards made. Again, it includes all grants that have been made since the 1st December 1790, "or that may be hereafter made." This language appears wholly inconsistent with the notion that the Legislature was dealing merely with grants to be made while the settlement was in progress.

54. It appears to me clear that grants made for holding land free from the payment of rent, and not subject to the performance of any duty to the zamindar, and free from the payment of revenue to the Government or zamindar, are, under S. 10, Regulation XIX of 1793, null and void; and that what are ordinarily called rent-free grants are of this description-There was nothing new in the prohibition. Zamindars and farmers, as early as 1772, were bound by an express clause in their leases, not to confer any grants without the knowledge and sanction of Government.

55. In 1782, a plan for the institution of a bazi zamin daftar, proposed by the Calcutta Committee of Revenue, was approved of by the Governor-General in Council. This document refers to the loss sustained by Government in its revenue, in consequence of the alienation of lands without its authority. It states that zamindars had continued to violate the stipulation not to confer grants without the authority of Government; that the practice affects the revenues of Government, first, by the alienation of the lands included in the general rental; and secondly, by lessening the value of the revenue lands; that this was effected by withdrawing the ryots from the revenue lands and inducing them to settle in the bazi zamin, which the proprietors could afford to rent to them on easier terms than a farmer or zamindar who pays an assessment for lands held by him. It was proposed that bazi zamin lands should be registered after the titles under which they existed should have been ascertained. Certain principles were laid down as to lands alienated after the 12th of August 1765, and, amongst, other things, it was declared "that as the Governor and Council of Bengal only have the authority to alienate lands from the jumma, all grants made by any other persons whatever without their authority, and which have not been subsequently confirmed by their sanction, would be deemed invalid;" and a rule was sanctioned that "all grants of land subsequent to the grant of the Dewanuy to the Company under the general denomination of lakhiraj, gair jummai," &c., should be declared invalid, excepting such as have been confirmed, &c. 3 see 3 Colebrooke''s Digest of the Regulations, pp. 224-231.

56. In the Regulation respecting "lakhiraj lands," passed by the Governor-General in Council, 1st December 1790, it is enacted by s. 2 that "all grants of rent-free land made or confirmed since the 12th of August 1765, by any other authority than that of Government, and which have not been confirmed by them, shall be held invalid, and liable to resumption," &c. By s. 8, "any person who may purchase a village or villages, either by private or at a public sale, subsequent to the date of this Regulation, shall be entitled to the property in the soil, and the Government''s share of the produce, whether it be more or less than one hundred sicca rupees per annum, of all portions of such village or villages that may have been alienated since the date of this Regulation, and prior to the date of his purchase," &c. S. 11 directs that suits for the resumption of such lands shall be brought in the Court of the Collector of the district; see 3 Colebrooke''s Digest of the Regulations, p. 292. We have seen that Regulation I of 1793, s. 8, empowers proprietors to transfer their proprietary rights in the whole or any portion of their estates by sale, gift, or otherwise, without applying to Government for its sanction to the transfer, and that, on the transfer the fixed jumma, is to be apportioned in the manner therein directed. In the prohibitory clause of the Regulation of 1790, the term used is "rent-free," the change to "free of revenue" in the Regulation of 1793 is rendered necessary by the power given to zamindars by Regulation I of 1793 to alienate any portion of their estates, if a provision is made for the payment of the revenue in respect of such portion. Except this necessary modification, there is nothing that leads to the inference that by "grants exempt from the payment of revenue made since the 1st of December 1793, or that may hereafter be made," the Legislature meant anything different from the rent-free grant spoken of in the earlier Regulation. It appears to me difficult, if not impossible, to give any meaning to the words "grants for holding land exempt from the payment of revenue that may hereafter be made," except by supposing it to refer to grants free of all payment whatever in respect of rent or revenue, either to the Government or the zamindar. It was no new or hasty enactment, but was consistent with the whole course of legislation on the subject from the time of the Company''s accession to the Dewanny, throughout which the principle is constantly asserted that the revenue-paying estates should be preserved entire in the hands of the parties by whom the revenue was to be paid.

57. If the meaning of the law is clear, and the language positive, no further enquiry is necessary. Whatever may be thought of the policy of any particular enactment, whether in particular cases it may appear to be likely to operate harshly or not, it is the duty of Courts of Justice to administer the law as they find it. To use the words of their Lordships in delivering the judgment of the Privy Council in the case of Moonshee Buzloor Ruheem v. Shumsoonissa Begum Moore''s I.A., 551, at p. 604: "If the words of a law are clear and positive, they cannot be controlled by any consideration of the motives of the party to whom it is to be applied, nor limited by what the Judges who apply it may suppose to hare been the reasons for enacting it."

But if it is suggested that the construction I put upon the language of S. 10 involves such hardship and injustice that such construction cannot be the true one, and that it must be supposed that the Legislature meant something different from that which seems to be the natural meaning of the words used, I am prepared at once to join issue on that point.

58. The enactment is really no more than this, that from thenceforth no man shall hold lands in full proprietary right without contributing to the land tax, either by a direct payment to the estate, or, if he holds as a dependant talookdar, by payment to or through the zamindar of such "revenue" as shall be fixed by the zamindar. Short of this, and subject to the limitation as to leases, to which I shall come presently, there is no sort of estate or interest which a person desiring to possess land could not, under the Regulations of 1793, acquire by grant from a zamindar. I do not understand what hardship there is in limiting the zamindar''s powers of alienation, as I believe S. 10 limits them a zamindar has full powers to alienate the lands held by him, or any part thereof absolutely, so that the purchaser or grantee may hold the portion of land granted to him as a distinct estate free from all alienation towards, or dependence upon, the zamindar or his successor. But in the case of grants of independent estates, where the grantee is to hold in full proprietary right, free from all obligation to the zamindar, he must hold subject to the same conditions as those under which the zamindar had held it,--the conditions under which all land in the country is held, unless specially exempted by grant made or confirmed by the Sovereign authority,--viz., subject to the payment of the proportion of the Government revenue properly chargeable on the land. There is nothing unreasonable in such a rule. It does not, in any degree, interfere with the absolute power of disposition on the part of a zamindar, or of acquisition on the part of an intending purchaser; and it can in no way affect the marketable value of the land in the hands of the zamindar.

59. For myself I am wholly unable to understand the view of the Chief Justice and those learned Judges who appear to think it necessary, convenient, or reasonable, that a zamindar who holds land, every biga of which is charged with the payment of Government revenue, should be allowed to alienate land to be held by the alienee under conditions more favorable than those on which the zamindar held it. I will quote the words of Lord Brougham in the case of Keppell v. Bailey 2 M. & K., 517, at p. 535: "There are certain known incidents to property recognized by the law. But it must not therefore be supposed that incidents of a novel kind can be devised and attached to property at the fancy or caprice of any owner. It is clearly inconvenient, both to the science of the law and to the public weal, that such a latitude should be given. There can be no harm in allowing the fullest latitude to men in binding themselves and their representatives, that is, their assets, real and personal, to answer in damages for breach of their obligations. This tends to no mischief, and is a reasonable liberty to bestow; but great detriment would arise, and much confusion of rights, if parties were allowed to invent new modes of holding and

enjoying real property, and to impress on their lands and tenements a peculiar character which should follow them into all hands, however remote." On these principles, one would expect to find that a zamindar might bind himself and his heirs by a personal covenant to pay the revenue of an alienated portion of the estate, but could not grant lands to be held free of the payment of revenue, or annex to the estate, so as to bind an assignee, on obligation to pay revenue in respect of lands alienated by him.

60. But the Regulation goes further. The preamble shows that the object of the enactment was to prevent such alienations to the prejudice of the security of the public revenue. Now, it must be remembered, that at the date of these Regulations the Government revenue was equal to ten-elevenths of the total rental. The estimated surplus of the total collections from the land, over and above the Government revenue, or, in other words, the beneficial interest of the zamindar, was no more than ten per cent on the revenue; see the preamble of Regulation II of 1793, and Bengal Special Orders, Regulation VIII of 1793, ss. 75 to 77. If zamindars had been left at liberty to make absolute grants of portions of their lands free of revenue or rent, it is certain that great difficulty might have been thrown in the way of the Government in realizing the public revenue from the land. We shall see presently that, by Regulation XLIV of 1793, the power of zamindars to grant leases was restrained with the express object of preventing them from impoverishing themselves and their heirs. It would have been preposterous to limit thus the power of zamindars to grant leases, if they were left free to grant their lands to hold free of rent in fee-simple.

61. Again, at the time of the permanent settlement no survey had token place. If immediately after the settlement, the zamindaris could have been split up and subdivided, and large portions of them disannexed from the parent estates by rent-free grants, without notice to the Government, the security of the Government revenue would have been enormously imperiled. It may be said that if the zamindar made default the whole estate might be sold, and the grantees of the zamindar would have no title as against the auction-purchaser. But the officers of Government would probably have had great difficulties in identifying the lands to be sold, and it is by no means clear that the zamindaris, when sold, would have realized prices sufficient to cover the arrears. There would have been great risk that the boundaries of zamindaris would have become confounded, and I believe that, as a matter of fact, in almost every case, a purchaser at a sale for arrears of revenue would have bought little more than a crop of law suits.

62. In view of these dangers to the security of the public revenue, the stringency of the enactments of S. 10 is perfectly intelligible. The case has been compared by some of those learned Judges who differ from me with the well-known instances of lenses by ecclesiastical persons; see Bacon''s Abridgment, tit. Lenses (H), and the case of Ranee Surnomoyee vs. Maharajah Sutteeschunder Roy, has been referred to.

But the construction put upon the Statutes in question depends upon the fact that the leases are good at common law, and the Statutes were made for the benefit of the successors of the party creating the void lease, and not to enable him to avoid his own act. Here the enactment is for the security of the public revenue; the language is clear and imperative, and makes it not only the right, but the duty of every person possessing the proprietary right in any estate, to dispossess the grantee in possession under a grant for holding land exempt from the payment of revenue, and reannex it to the estate in which it may be situated. So far, therefore, as the assignee or heir of the original grantor is concerned, there appears to me no doubt that the grant is void as against them.

63. Whether or not the grantee paid a valuable consideration to the original grantor, does not, in my opinion, affect the position of a person who has deliberately chosen to endeavour to acquire property under conditions prohibited by law. Grants of land free of revenue, created with a view to the personal advantage of the grantee, or even with a view to the clandestine Appropriation of the produce to the use of the grantor or sold to supply his private exigencies, are, amongst others, specially aimed at in the preamble of Regulation XIX.

64. I am not bound to consider what would be the position of the parties if the question arose between the original grant of and grantee, of how far the heirs of the grantor may be compellable to make restitution out of his estate, if, in obedience to the provisions of S. 10, they dispossess the grantee. These questions are not raised in the case before us. I believe there would be no insuperable difficulty in doing justice between the parties. But as regards a person taking the zamindari by private purchase from the original grantor, on the principle stated by Lord Brougham in the case I have already referred to, I believe that, by taking the estate, he would be in no way bound by the act of the former owner: and as regards the heirs of the former owner, the maker of the void grant, whatever may be the liability of the ancestor''s estate in their hands, to answer for their act in entering on lands contrary to his grant, I must give the same answer, viz., that the grant is void as against them.

65. The Regulations of 1793 constitute an entire code, and were passed on the same day. In order to show how and in what manner the Legislature meant to provide for the security of the public revenue, I propose to read the preamble of Regulation XLIV (reads). S. 2 provides that the jumma of dependent talooks is not to he fixed, nor farms or pottas granted for a term extending ten years. By the 8th section nothing contained in this Regulation shall be construed "to prohibit actual proprietors of land granting, without the sanction of Government or its officers, to any person not being a British subject or a European, a lease or potta for ground for any term of years, or in perpetuity for the erection of dwelling-houses, or buildings for carrying on manufactures, or for gardens, or other purposes, and for offices for such houses or buildings." It has been supposed that the 8th section enabled

zamindars to grant lenses for the purposes named in perpetuity at any rate of rent. But I think this construction appears open to some doubt. The language of s. 2 is that no zamindar shall dispose of a dependent talook to be held at the same or any jumma, or fix at any amount the jumma of an existing dependent talook for a term exceeding ten years; nor let any lands in farm, nor grant pottas to ryots or other persons for the cultivation of lands for a term exceeding ten years. The change of the language in the second branch of this clause should be noticed. It may be, that the true construction of s. 8, read in connexion with s. 2, and the definitions of dependent talooks to be found in Regulation VIII, is that a lease for the purposes named is in effect a dependent talook, and as such may be granted for any term, of years, or in perpetuity, but not subject to a fixed rent. If so, the supposed inconsistency of the provisions of S. 10 of Regulation XIX with s. 8 of Regulation XLIV of 1793, has no existence whatever. However that may be, a lease under s. 8 is only grantable for limited purposes, and does not disannex the land granted from the revenue-paying estate.

66. I will observe, by the way, that the cases of Guruchurn Paramanik v. Odayenarain Mundal 6 Sel. Rep., 281 and Baboo Modenarain Singh v. Mussamut Ameeroonnissa Begum S.D.A., 1852, 967 referred to by Jackson, J., if carefully examined, will be found to amount to no more than this, that the lands held under the grant alleged to be invalid were not within the limits of the portion of the zamindari held by the party claiming to assess and reannex them to his estate. There is really no decision in either case as to whether the rent-free grant was valid or not.

67. In Special Appeal, No. 1116 of 1862, the facts, as stated at the bar, are that the grant is one made in the year 1815 A.D., or 1222 Fuslee, by Murijla Koer and Kousila Koer, the two widows of Moorlychand, in favor of Peary Sen Gywal, for the performance of the Gya shradh of Moorlychand. The plaintiff was the purchaser of a four-anna share in the mouza within which the land held rent-free was situate. The judgment of both the lower Courts was that the rent-free grant being made subsequent to 1790, is liable to resumption. And for the reason already given, I am of opinion that it is null and void as against the plaintiff.

68. The question proposed by the Division Bench does not really arise at all in the Special Appeal 253 of 1863. The suit is one to resume and assess lands within the plaintiff''s maurasi ijara. As to plots 2 and 3, which were granted for the purpose of making a tank at which the village cattle might drink, I believe we all agree. Indeed the case is governed by that of Piziruddin v. Madhusudan Pal Chowdhry Ante, p. 75, by which I suppose this Bench is bound. As to plots 1, 5, 6, 7, 8, 9, 10 and 11 they were granted by the plaintiff''s predecessors in title rent-free, or, as it is expressed in the grants or some of them, "lakhiraj," at various times between 1815 and 1842, in consideration of the payment of sums of money which perhaps represent, and may be taken to be, a fair price for the land. The peculiarity of the case is, that the grants

are made by a maurasi ijaradar who, for all that appears, may be a mere subordinate tenant of the zamindar, in no way connected with the payment of Government revenue.

69. The maurasi ijara potta under which the plaintiff and his ancestors held is not in evidence, but I will assume for the purposes of the argument that it places the ijaradar in the same position as a patnidar. Of course, I cannot assume that the ijara potta contains any special clause enabling the ijaradar to bind the zamindar of the nature referred to in s. 11 of Regulation VIII of 1819, as being one which may or may not exist in a patni potta. The Legislature, in Regulation XIX of 1793, was dealing with zamindars and their giants. That appears clearly from the preamble. There is nothing in the Regulation which applies to grants by persons other than zamindars or grants other than those out of the revenue-paying estates. The rent-free grants now under consideration are carved out of a subordinate estate. Except so far as they may be prohibited by positive law, rent-free giants are good. If a tenant renting a few villages from a zamindar makes a rent-free grant out of his subordinate estate, there seems no reason why such grants should not be good as against him and his heirs. It makes no difference whether the quantity of land comprised in the subordinate estate is large or small; whether it is a small part of, or even the whole zamindari. A grant by a subordinate tenant would not disannex the land from the revenue-paying estate. The tenant would pay rent for all the land comprised in the sub-grant, and the zamindar would pay revenue for it. If the subordinate tenure were sold by the zamindar or patnidar for arrears of rent, the rent-free tenure granted out of it would fall as of course, for though by express legislation, some under-tenures created by subordinate tenants are protected in case of the sale of the tenure for arrears of rent (as by Regulation VIII of 1819, s. 11), such provisions do not exonerate rent-free holders from the liability to be called on for the payment of a fair rent to the purchaser at such a sale. Heading s. 12, and referring to s. 11, of Regulation VIII of 1819, it appears to be taken as of course by the Legislature that if a patni talook is sold under any decree other than for arrears of rent, the purchaser succeeds to no more than the reserved rights of the former tenant, such as they may be, and is subject to any restriction put upon the tenure by his act. The Legislature treats it as clear that sales, gifts, and limited assignments by a patnidar, would be valid as against his heir or any person who, whether by purchase or otherwise, succeeds to no larger interest than the patnidar himself possessed.

70. I think that the grouts in question in Special Appeal 253 are not affected by Regulation XIX of 1793,S. 10, and are binding on the grantors and their heirs. I would decree the appeal in this case with coats, reverse the decision of the Court below, and dismiss the suit except as to the land in Dags Nos. 4 and 5 with costs.

71. I may observe that Trevor and Loch, JJ., on the 28th November 1860, in the case of Luckhun Acharj v. Tarachand Dutt Unreported, held that a lakhirajdar cannot resume lakhiraj within his lakhiraj estate.

Bayley, J.

72. On the question whether the papers sent to the Registrar as the judgments of Trevor and Campbell, JJ. (retired) and Shumbhoonath Pundit, J. (deceased), shall have the full effect of judgments, I am of opinion that, under the ruling in the Exchequer Chamber in Brand v. Hammersmith and City Railway Co. L.R., 2 O.B., 223; see per Channell, B., at p. 235, these judgments cannot have effect as judgments properly so called, but are still entitled to be recorded and considered as opinions as laid down in the case above cited.

73. But at the same time I think, that the previous fully recognized practice had led the above Judges of our Court to record their judgments as they did, when they found they were not called upon by the Chief Justice to deliver them, before the retirements of the two and the death of the third, and so had no opportunity to do otherwise than they did. I deposited my own in this case as a proposed judgment in February or March, and considered that it might, or it might not, become a final judgment, when I might be called upon to use it in that light, either with or without further discussion.

74. In the other case of Rutton Monee Dassee v. Kalee Kishen Chuckerbutty W.R., Spl. No. 147 (which will be referred to by the Chief Justice), J am free to admit, that, although I called it "a note of a judgment," still I considered it would have the effect of a judgment; but I have at the some time to notice that the decree was signed by the other Judges only, and not by me. I believe, however, that Trevor and Loch, JJ., did in fact look at it as a judgment, wrongly I now of course fully admit with reference to the law and the precedent of the English Court above cited by me.

75. After the judgments which we have already heard, and with reference to a still more elaborate one proposed to be delivered by the Chief Justice which we have had the advantage of seeing, I will not state again in detail all the facts of these cases, and all the provisions of the laws bearing on the subject before us. But I shall limit myself to the question which we have to answer, to the answer I consider the proper one to give, and to my reasons for my opinion.

76. The question we have to answer is (reads). I would answer the question by saying that, in my opinion, such a grant is not valid against the heir, or private purchaser, when made either by the zamindar or (as in one case here) maurasi ijaradar.

77. My reasons for that opinion are these. I apprehend there is no question now that such grants before the permanent settlement were invalid.

78. Article I of the Proclamation in Regulation I of 1793 says (reads). In my view, these words show, not so much an entirely new contract with a class of proprietors never before existing, as the continuance of the jumma assessed when the zamindar was a collecting agent with a new class of zamindars, let in, I admit, us

proprietors, but still let in only under the provisions and stipulations and restrictions laid down in all the Regulations passed on the 1st May 1793, which form in fact one Code of revenue settlement and administration.

79. Looking next toS. 10, Regulation XIX of 1793 (one of those laws passed on the 1st of May 1793), I can only read the declaration there to be in terms that grants made after 1st December 1790 of land exempt from the payment of revenue, are null and void; and, further, I hold that a grant which transfers a portion of an estate without any rents to be paid, which rents are recognised means from which the zamindar is to pay Government revenue, and thus form the basis of revenue, is such a grant as is contemplated by this S. 10 to be null and void. I can, moreover, only read S. 10, Regulation I of 1793, which is to the effect that in cases of transfer by public or private sale, or otherwise, of land in the estate in which the permanent assessment is fixed, a proportionate assessment of revenue is required to be assessed, as meaning that no land shall, in fact, he rendered exempt by any act of the landowner from revenue, that is, from bearing its proper quota of assessment. Its not bearing that quota would be the practical result when a grant is made without any rent, which rent forms the basis of that quota.

80. The permanent settlement rested, in my opinion, on that basis, viz., that the rents the zamindar might collect should afford him the means of paying the Government revenue. The settlement of 1793 certainly regarded the apportionment of the zamindar''s share and the share of Government, in those rents, as the mode by which it was originally determined what should be paid to Government as public revenue, and what remain as profit to the zamindar. I do not see that the basis of the contract in the permanent settlement on this point was altered, or how it was so; for, although the Government, by the permanent settlement, transferred its proprietary rights to the new class of zamindars, still the rents to he collected by the zamindar were rents, on the existence, and assessment, and distribution, and realization of which the permanent settlement rested; that is, if these rents were to cease to exist or to be realized by the zamindar, by transfers of lands of his estate rent-free, then the accident of the landholder having private funds, and his willingness to use them to pay Government revenue, or else a sale was the only security for the Government revenue of the estate. 1 take it that it is not denied that the security of the Government revenue was an essential part of the contract between Government and the new zamindars in 1793, and I hold that a stipulation restoring wasteful grants by zamindars to third parties (as the grantees are in this case) was one of those stipulations. In my opinion, this was the particular object of S. 10, Regulation XIX of 1793. That Government had ever in mind that the private funds of zamindars were no security for the Government revenue, and that the zamindars'' improvidence had to be restricted and watched, and that there was risk to Government in raising them from collecting agents to a new class, as they were liable to be influenced by Brahmins, and by other motives, to make wasteful grants, is, I think, clear from the Regulation passed on the 1st May 1793, especially from the

preamble of Regulation XLIV of 1793.

81. But it is said that the public sale for default provides ample security for the Government revenue. It is true that now, in most cases, the balance due is recovered by the sale. But this was not always so; and at one time, some thirty years ago, sales were but too numerous and much deprecated. Further, Government, in many instances, did not then realize the balance of revenue by sale.

82. Though, however, I look upon the sale for arrears of Government revenue as undoubtedly the great security, still it was the extreme measure to be resorted to, for the realization of the balance of public revenue; and I cannot read the enactments passed on the 1st May 1793 as a whole and as one Code (as we are required to read them), without coming to the conclusion that, while the law provided the sale as such ultimate measure, it primarily looked to avoid such sales and keep the zamindars safe in their estates, by restricting the power of the zamindar to waste the assets by improvident grants of lands without rent, and that, because such acts left the zamindar without the assets available from his full rents to pay the Government demand of his estate. It is not denied that Government did not only look to the next generation as being liable to suffer by grants of land exempt from revenue. The Regulations of 1793, indeed, expressly refer to the risk of estates being deteriorated by the improvidence of the first generation of zamindars. It is not denied too that the limitation of leases to periods of ten years was continued from the decennial to, and through the permanent settlement, and did not cease with that up to 1812. It is said that the permanent settlement made the zamindar an absolute proprietor. But can he be properly so called, if he could not, under the permanent settlement, make leases for as long periods as he pleased? Yet it is said that he could grant away land exempt from rent in perpetuity, because he was an absolute proprietor.

83. It is argued that a lease for a nominal rent for ten years contained as much means of deterioration of assets as if the zamindar could absolutely transfer, i.e., if he could let for ten years at a nominal rent, he could thus as completely divest himself of assets to which Government looked as enabling him to pay the Government revenue, and could default as injuriously for Government as if he made grants in perpetuity exempt from the payment of rent. But it may be fairly answered that the restriction and limitation to ten years'' leases in the permanent settlement was, in fact, a very strong restriction and limitation of proprietary rights; and, further, that there would have been no restriction to ten years in the matter of leases, had it not been thought that the revenue would be jeopardized by such leases on nominal rents if made in perpetuity. If then by the smaller matter of leases this jeopardy was contemplated, would not the still larger power of perpetual grant exempt from rent, much more jeopardize that revenue by direct failure of assets, from failure of rents which before the grant would have been paid to the grantor, and have been a sure fund to enable him to pay the Government revenue? I may

also add that the short period of ten years left the Government free to remedy any injury before it had gone to any great extent. This would not be so with reference to grants in perpetuity.

84. It is then argued that, by these grants, there is no exemption of the zamindar from liability for the public revenue, and that the proprietor, as absolute proprietor and master of his own property by the permanent settlement, would have still just as much public revenue to pay as if he had made no grant of land free of rent.

85. It is also strongly pressed on us, that the sale laws provide full security and remedy. But I have always understood that it was the object of the Legislature from the period of passing the Regulations of 1793 to that of passing Act XI of 1859, to keep zamindars in possession of their properties, and therefore to avert, and not to resort or look to, public sales of estates as the first or best means of obtaining the payment of Government revenue. Now, if the zamindar may make any grants in perpetuity, saying to the grantee, "You shall pay me no rent for this land, although I, of course, must pay the proportion of Government revenue assessed on it, and I must pay it by any means I can, and I know not what, instead of from the rents I should ordinarily have as a sure resource from the land now granted rent-free to you," will public sales be averted or precipitated?

86. Let us take a practical illustration: say a zamindar in 1793 had an estate of 1,000 bighas charged with a payment of public revenue of Rs. 1,000. He has no private means at all, or having them, he chooses to spend them in other ways than paying Government revenue from them. Four Brahmins ask him for grants of four parcels of lands of 100 bighas rent-free, or 400 bighas rent-free, but from which the grantor hitherto collected rents of Rs. 100 from each, or Rs. 400. The grants are made. The zamindar no longer realizes the Rs. 400 from the four parcels of lands. He runs short by Rs. 100 of the means he had to pay the public revenue. He defaults in consequence, and then the estate is sold, and thus only is the balance due to Government realized. Multiply this one case by the number of zamindars so influenced by Brahmins in 1793, and by the same consequences of sale in each case, would then all those numerous sales be the result contemplated for the welfare of the zamindars, then first created proprietors by that Government which made the laws of the settlement of 1793? I certainly think not, and therefore I contend that the words of the Legislature represent their intention when they prohibited grants exempt from revenue, and looked to other very distinctly laid down restrictions and stipulations in their Code of 1793 (and not to sales alone) for retaining the assets, i.e., the rents that safely and surely were available to zamindars, to pay the public revenue, and also to leave a profit for themselves.

87. It is then said that there can be no insecurity from deterioration of assets by grants rent-free, because not only will the sale realize all balance, but by it the estate start afresh free of all encumbrances, and with all its former assets available to the purchaser. But if the revenue sale be the great security of Government, in order to

give a purchaser such an estate, can it not he fairly said that the prohibition of the law of such grants being made rent-free, and declaring their invalidity if so made, is the security the Government primarily looked to, in order to avoid the extreme measure of sale, and the consequent ouster of the zamindar, whom it was the great object of Government to retain in his lands?

88. Now, it is clearly admitted that, quoad Government, no rent-free grant is valid, and all under-tenures fall by a sale for arrears of Government revenue. The reason is, that Government must give the purchaser the estate as it was at the date of the permanent settlement. But as to third parties, grantees, S. 10, Regulation XIX of 1793, refers in terms to the security of the public revenue being affected by grants of lands to such grantees exempt from payment of public revenue, and prohibits them. If then a sale were the only thing to which it was desired to have recourse in order to obtain this security, why has this further provision been enacted at all in the stringent terms it has been? And why are the evils and risks arising from the character of the then zamindars so fully set forth in the preamble of Regulation XLIV of 1793?

89. Again, I would observe, that this same legislation of 1st May 1793 provides large means for the zamindar to be assisted in collecting his rents, in order that he might pay from them the Government revenue. If a grant be made rent-free in such a way that no Government revenue is supplied from rents, because the grant, rent-free, removes all those rents of that portion of the estate so granted which would otherwise go to pay the Government revenue, what is the use of so much care and provision for the collection of the rents of the remaining portion, which is said to be the profit left to the zamindar, and with which Government declared they had no concern?

90. It is also said that, not each biga, but every biga of an estate is liable to bear its quota of the burden of the Government revenue. But if a portion of an estate be granted free of rent, surely each biga of that grant is included in the estate, of which every biga has to bear its portion of burden for rent, and for which it is hypothecated for its quota of the Government revenue; and thus, whether it be the assets of each biga or of every biga which enables the zamindar to pay the Government revenue of the estate, it is the fact that by such grants rent-free (and they may be for any portion of the whole estate, however large), that portion is, in fact un-hypothecated, and the revenue unsecured, except by sale.

91. On all these reasons, I cannot but think that all the Regulations of 1st May 1793 show that the Legislature of that day was so extremely doubtful of the strength and stability of this newly created class of proprietors, if left to take care of themselves, and without the legislative prohibitions as to wasteful grants which deprived them of those rents from which the demand for the public revenue was to be met, that, for that reason, they clearly and stringently imposed these restrictions.

92. Reference has been made to the power given to zamindars absolutely to resume invalid lakhiraj grants under 100 bighas. Previous to the permanent settlement, Government treated these, when resumed, as khas Government properties. When the contract of 1793 was made, and the power was given to the zamindars to resume and manage these lands under 100 bighas, it was done (just as in the case of 50 bighas of the most recent resumption days), because it was not worth while for the Government to resume and collect from such small scattered properties, and make them khas estates. The lands were topographically in one estate, and they were thrown in by Government to add to the zamindar''s resources, and to enable him to have more rents wherewith to meet the demands of Government revenue.

93. As to the point that a grantor cannot repudiate his own grant, I of course fully admit the maxim as a legal one; but I still am forced to say that S. 10, Regulation XIX of 1793, read with the other laws of the 1st May 1793, does not provide for the contingency, and however much one may regret a hard case, our duty is not to consider the hardness of the case, nor to supply the omission of the regard of the legal maxim cited, but to interpret and apply the laws according to the terms used, taken in their ordinary sense.

94. Referring lastly to the precedents, I think that the case of Ahmed Alee Khan v. Raja Modhnarain Singh S.D.A., 1855, 395 and Shufaetoollah''s case S.D.A., 1848, 460 bear out the view taken by me, by the terms used in those decisions; and if we were to admit that a dissentient Judge''s judgment is to outweigh that of two others, the whole recognized system in regard to what is a precedent would be subverted.

95. Regarding then the preamble of Regulation XLIV of 1793, and its text, together with S. 10, Regulation XIX of 1793, and looking to the facts of the status of zamindars in 1793, and to the reasons I have given, I can only come to the conclusion that no landowner, nor his representatives, as a perpetual holder (such as a maurasi ijardar here), could make valid grants of lands in perpetuity out of his perpetually settled estate exempt from rent, and that the heirs and purchasers may resume them, because invalid by law.

96. I therefore generally concur in the present judgment of Norman and Seton-Karr, JJ., and in the recorded opinions of Trevor, Campbell, and Shumbhoonath Pundit, JJ., I would answer the Division Bench accordingly.

Peacock, C.J.

97. This case is a very important one, not on account of the value of the property at stake, for that is small, but on account of the principle involved in it.

98. The question which is asked by the Division Bench is (reads). It is contended, on the part of the plaintiff, that such grants are grants to hold land exempt from the payment of revenue within the meaning of S. 10, Regulation XIX of 1793, and are consequently void, and that the heirs of the grantor, or a purchaser from him by

private sale, are entitled to resume the lands, and to treat the grantee as a trespasser. Such a construction of S. 10 would be, in my opinion, contrary to the intention of the Legislature, and at variance with every principle of justice.

99. The case was originally referred to a Full Bench consisting of the Chief Justice, L.S. Jackson, Shumbhoonath Pundit, Levinge, and E. Jackson, JJ. It was argued at full length, and the point being a very important one, the Court took time to consider its judgment. The Judges at that time were not agreed in opinion as to the decision to be pronounced. Before judgment could be delivered, two of the Judges, viz., the Chief Justice and L.S. Jackson, J., were obliged to leave India on account of their health under medical certificate. During their absence, another case of a similar nature Pizirudin v. Madhusudan Pal Chowdhry, ante, p. 75 was referred to a Full Bench consisting of the officiating Chief Justice, Mr. Norman, and Trevor, Loch, Shumbhoonath Pundit, and Levinge, JJ. The case was decided on the 9th of January 1865 just before my return to India. The actual decision of that Full Bench ultimately turned upon another point, viz., that the rent-free grant was for the purpose of digging a tank, from which some of the villagers in the estate were to have a light to take water. Two of the Judges considered that that fact did not make any difference, and that the grant was void. Two of them thought that the grant being for the purpose of digging a tank, from which the villagers were to have a right to take water, was not void. The majority of the Judges, however, with the exception of Levinge, J., expressed an opinion, not necessary for the decision of the case then before them, that rent-free grants made by a zamindar after a permanent settlement are void. Levinge, J., who, after the hearing of the case before the first Full Bench, agreed with me in the view which I then took of it, held that such grants were not void. I regret to say that that learned Judge was prevented by illness of a serious nature from ever taking his seat upon the Bench after my return from England, and death soon afterwards deprived us of his valuable assistance as a colleague.

100. Under these circumstances, I did not consider it just to act upon the opinion of the majority of the Judges of the second Full Bench in a case in which the present appellant had not been beard, and which was not referred until after his case had been argued before the first Full Bench. I therefore thought that the present case ought to be reargued before a Full Bench consisting of nine Judges; and the other Judges concurring in that view, I appointed a Full Bench of nine Judges to hear it. Of that Full Bench two, viz., the Chief Justice and Louis Jackson, J., were on the first Full Bench; two, viz., Trevor and Norman, JJ., were on the second Full Bench; one, Shumbhoonath Pundit, J., sat on both of the Full Benches; and the other four Judges were not members of either of them. The case was fully and ably argued before the nine Judges 5 but they could Dot agree in opinion, and consequently the Court took time to consider. The Judges afterwards met, but they could not then agree as to the answer which ought to be given to the question. The point was not finally discussed at that meeting; but as there did not appear to be any reasonable ground for

supposing that the Judges would not come to a unanimous opinion, it was then arranged, as I understood, that such of the Judges as might wish it should put their opinions into writing; and although I cannot say that it was so expressly stated, I fully understood that anything that was to be written was to be circulated for the consideration of the other Judges of whom the Full Bench was composed, in order that, after considering the reasons which might be adduced on either side, the question might he fully and thoroughly discussed at another meeting, and that the Judges, if they could not then agree, should deliver their judgments seriatim. Soon after the departure of Trevor, J., for England, I discovered that some of the Judges had expressed their opinions in writing, and had sent them into the Office of the Registrar without informing me, and I believe, I may say, without informing any of the other Judges of their intention to do so. They probably considered that their written opinions were their final judgments in the case; but I cannot treat them otherwise than as arguments and minutes of the judgments which they proposed to deliver. Amongst the number of the Judges who sent in their opinion, were the late Shumbhoonath Pundit, J., whose death we all lament, and Trevor and Campbell, JJ., both of whom have since retired from the Bench. The opinion of Trevor, J., is dated the 9th April last, only fourteen days before he retired.

101. I am informed that, according to the practice of the late Sudder Court, the views so expressed in writing and sent in to the Registrar''s office, would have been considered judgments. All the opinions thus expressed are in favor of the heir''s right to resume, and differ from that which I entertain; and this circumstance renders it an unpleasant duty for me to declare that, in my opinion, they cannot be considered as judgments, but merely as memoranda of arguments to be adduced. This is not a mere technical objection, but it is founded upon a fundamental principle essential to the due administration of justice, that every judicial act which is done by several Judges ought to be completed in the presence of the whole of them. This is not the first occasion upon which I have been called upon to express my opinion upon that subject. I have done so several times, and in one case in particular which has been reported Khelut Chunder Ghose v. Tarachurn Koondoo Chowdhry, 6 W.R., 269. I then stated that, in my opinion, a final judgment ought not to be pronounced by a Court consisting of several Judges in a case in which they differ, until, by conference and discussion, they have endeavoured to arrive at a unanimous judgment; and I then cited authorities for the opinion which I expressed. If, after discussion, and after deliberately weighing the arguments of each other, the Judges cannot agree, their several judgments ought to be delivered in open Court in the presence of the others. It would not have been lawful, nor would it have been even seemly, for each of the Judges who sent his written opinion into the Registrar''s office, to have gone separately into open Court without communication, or even after communication, of his intention to the other Judges, and to have read out as his final judgment the contents of the memorandum which he sent in to the Registrar''s office. If each of the Judges who composed the Full Bench could not

have gone separately into Court, and in the absence of the others, have read out his own judgment, without hearing the arguments which each of the other Judges who were associated with him as members of the Full Bench, might adduce to alter his opinion, he could not lawfully deliver a separate judgment at a separate time, by handing into the Registrar as his judgment a separate paper signed by him containing his written opinion. The mere arguments and expressions of opinion of individual Judges who compose a Court are not judgments. A judgment, in the eye of the law, is the final decision of the whole Court. It is not because there are nine Judges that there are nine judgments. When each of the several Judges, of whom a simple Court is composed, separately expresses his opinion when they are all assembled, there is still but one judgment, which is the foundation for one decree. If it were otherwise, and if each of the memoranda sent in on the present occasion was a judgment, there would be nine judgments in one case, some deciding one thing and some another, and each Judge would have to review his own judgment separately, if a review should be applied for.

102. In the case of Rutton Monee Dassee v. Kaleekishen Chuckerbutty W.R., Spl. No. 147, which was heard before Bayley, J., and two other Judges, in 1864, my honorable colleague made the following remark:-- "As I shall probably have gone on leave before the judgment of my colleagues will have been given in this case, I leave my note of my view after hearing Counsel." In that case, the Judge very properly recorded the note which he left merely as an expression of his opinion, and not as a judgment. This was my impression from the wording of the memorandum; but from what my honorable colleague has stated to-day in Court, I find that he did intend it to be a judgment, and that I was under a wrong impression.

103. In a very recent case in the Exchequer Chamber in England--Brand v. The Hammersmith and City Railway Co. L.R., 2 Q.B., 228 & 235--the Court, after argument, took time to consider. The Chief Justice of the Common Pleas prepared a written judgment to be delivered, but other members of the Court were not then prepared to give judgment. Before judgment was delivered, the Chief Justice resigned. The other Judges differing in opinion, the judgment which the Chief Justice had prepared was treated merely as an expression of his views, and not as a judgment.

104. I cannot say that the Judges who have expressed their views of this case might not have changed them upon discussion with the other Judges who were associated with them as members of the Full Bench. I cannot suppose that, when they sent in their opinions in writing to the Registrar''s Office, they considered that they had so far recorded their final judgments, that they had not the power to change their opinions, however they might be influenced by the arguments of their colleagues; nor can I believe that they were so wedded to their opinions that they would not have been ready to change them if they had been convinced that they were wrong. The minutes sent in may be valuable as memoranda containing the opinions and

arguments of the Judges who expressed them, and I have read and considered them very carefully. It appears to me that they ought to be filed, so that the parties, if they should obtain leave to appeal, may have them transmitted to Her Majesty in Council, in order that the Lords of the Council may have the benefit of the arguments and opinions expressed, and may treat them as judgments if they should hold that they legally had that effect.

105. Unfortunately, a succession of circumstances, over which we have had no control, has caused considerable delay in this case; but as execution has not yet been issued, and the defendant is still in the possession of the lands of which he and those under whom he claims have been in the peaceable and undisturbed possession for nearly fifty years, it is some consolation to know that the delay which has occurred has not been productive of injury, but has merely stood in the way of a plaintiff who was endeavoring to enforce an unjust and an unrighteous demand.

106. The question, referred in Appeal No. 253 of 1863, involves a most important point, viz., whether a zamindar, who for valuable consideration sells land either absolutely or for a term of years without reserving any rent, or the heirs of such zamindar or a purchaser by private sale from him, can treat the grant as void, and resume the lands. As a similar question has been raised in Special Appeal No. 1116 of 1862, the pleaders in that appeal have also been heard before the Full Bench.

107. The question relates to grants made since the 1st December 1790, and to lands included in, and forming part of, the mal lands of a permanently settled estate, for the revenue of which the zamindar has engaged and is liable to Government, and for the arrears of which the whole estate is liable to be sold. The question raised is, not whether the grant would be void as against a purchaser at a sale for arrears of government revenue but whether the grantor himself, or his heirs or any person claiming under him, can trout the grant as void and turn the purchaser out of possession, or assess the lands at a full rent, notwithstanding they have been sold rent-free. The two questions are very different.

108. There can be no doubt that grants rent free are void as against a purchaser for arrears of revenue, unless they fall within any of the exceptions in the sale-laws. When a landlord re-enters and avoids a lease under a clause of forfeiture for non-payment of rent, or for breach of covenant, the title of the lessee is at an end, and all leases or other incumbrances created by him fall together with the lease out of which they were created. So also, in the case of a sale for arrears of revenue under the power of sale expressly reserved to Government by the sale-laws, all leases and incumbrances, with certain exceptions, are void as against a purchaser. If this were not so, the power of re-entry in the case of a landlord, and the power of sale for arrears of revenue, might in all cases be rendered valueless by means of rent-free grants or leases, or other incumbrances, for the whole or greater portion of the estate created by the lessee or zamindar during the continuance of his lease, or of his proprietary right in the estate.

109. The cases are very different from that of a vendor''s treating his own grant as void, and taking away from the purchaser that which he has sold to him. A purchaser for arrears of revenue does not claim through the zamindar whose estate is sold, but through the Government, under a power of sale adverse to the zamindar; see s. 5, Regulation XLIV of 1793, amended and altered by subsequent Regulations and Acts, of which the last is Act XI of 1859. Persons who purchase or take leases from a zamindar are cognizant of the sale-laws and are fully aware of the risk which they run, and that a zamindar cannot convey a title which will stand good against a purchaser for arrears in default of payment of revenue.

110. In dealing with this case, I refer to Regulation XLIV of 1793, because it formed part of the same Code as Regulation XIX of 1793, and was the sale-law which existed under that Code. In construing one of the Regulations of that Code, we cannot consistently take into consideration any Regulation which was passed subsequently. The question turns upon the construction of the words in S. 10, Regulation XIX of 1793, "all grants for holding land exempt from the payment of revenue." Some of the Judges hold that those words include grants or leases by a zamindar to hold exempt from the payment of rent. In my opinion the word "revenue" is used in its ordinary and proper sense, and refers only to grants for holding free from the payment of revenue to Government.

111. The Officiating Chief Justice (Norman, J.), in the second Full Bench considered that as a right was by the grant then under consideration reserved to some of the villagers of the estate to take water from the tank for the construction of which the grant was made, the water might be considered as the produce of the land, and that the right to take it was in the nature of a reservation of rent in kind, but the other Judges did not concur with him in that view; and with all deference I am clearly of opinion that if it was necessary to reserve rent in order to prevent the grant from being void as a grant for holding land exempt from the payment of "revenue," the right reserved to the villagers to take water from the tank was not a reservation of rent, and it was still less a reservation of revenue. If the right of the villagers to take water from the tank was Government revenue, it was a kind of revenue which was wholly useless to Government, and could not assist them in meeting the necessities of the estate; and if it was rent, it could not assist the zamindar in providing for the payment of the revenue.

112. In the case now under consideration, one of the grants was an absolute grant to the grantee and his heirs for digging a tank; one was an absolute sale of land to the grantee and his heirs for the purpose of building a house; and others were sales of land generally to the grantee and his heirs. It is clear that if a reservation of rent was necessary, the erection of a dwelling-house on the land granted for that purpose could not amount to a payment of rent or revenue, whatever opinion may be entertained as to the water of a tank. As to the grant therefore for building a house, if the Judges who considered that a grant to hold free from the payment of

rent to the zamindar or his heirs is a grant to hold exempt from the payment of revenue, and is therefore void, and that the grantor or his heirs may treat the grantee as a trespasser, are correct in their view of the law, the plaintiff is entitled to recover the lands which were sold by his ancestor and upon which the purchaser has expended his money in building a house. Such a grant would be binding even upon a purchaser under a sale for arrears of revenue; Regulation XLIV of 1793, ss. 5 and 8; and with all respect for the opinion of my honorable colleagues, I have no doubt that it is also binding upon the grantor and his heirs. It would be a great anomaly if such a grant were binding upon a purchaser at a sale for arrears of revenue, and not binding upon the grantor himself or his heirs.

113. I must admit that, before a revenue settlement, the Government''s share of the produce of every biga of land in cultivation, or the rents paid in lieu of it, were treated as revenue. In the report of Messrs. Anderson, Crofts, and Bogle, the Commissioners appointed by Government in 1776 to collect materials for the settlement, and of which an extract is set out in 2 Harrington''s Analysis of the Regulations, p. 58, it is said: "Amongst all these various sources of revenue and profit, those which issue out of land form so capital and important a branch that comparatively speaking the revenue of Bengal may be said to consist of land rents."

114. It is true that Mr. Harrington objects to the indefinite use of the word "rent," and that in another part of the report it is said-- "Almost all the lands of Bengal are held under some person who collects the rents, pays the revenue, and stands between the Government and the immediate tenant of the soil."

115. However indefinitely and inaccurately the word "rent" may have been used before the permanent settlement, and whatever may be the correct theory as to the proprietorship of the lands previously thereto, it is clear from the recitals in Regulation XIX of 1793, and in several others of the Regulations of the Code which that Regulation formed a part that the Government claimed to be entitled to a proportion of the produce of every biga of land in cultivation, demandable in money or kind (according to local custom), unless it transferred its right thereto for a term or in perpetuity or limited the public demand upon the whole of the lands belonging to an individual. This was the basis upon which the permanent settlement was founded.

116. If Government made a lakhiraj grant for a term or in perpetuity, it transferred to the grantee its right to a share in the produce of the lands during the existence of the grant. If it made a temporary settlement with a zamindar, it limited the public demand upon the whole of the lands included in the settlement to the amount of revenue which the zamindar engaged to pay for such lands during the continuance of the settlement. In cases in which there was no valid lakhiraj, and no temporary revenue settlements, the rents or share of the produce payable by the occupiers of the land were treated as revenue belonging to Government. When a temporary settlement was made with a zamindar, he could not enter into any engagement with

dependent talookdars, under-farmers or ryots, beyond the period of his own engagement with Government; see Regulation XLIV of 1793, s. 1.

117. So long as that state of the law continued, any grant to hold lands free from the payment of rent, which included the Government''s share of the produce, beyond the period of the zamindar''s engagement, was no doubt treated as an invalid lakhiraj grant, whether such grant was according to its language to hold free from the payment of "revenue" or free from the payment of "rent." In the Regulation of the 1st December 1790, grants to hold lands "rent-free" are treated as lakhiraj grants, or grants to hold lands "exempt from the payment of revenue to Government." If such grants had been binding upon Government after the expiration of the zamindar''s temporary engagement for revenue, the aggregate of the rents upon the estimate of which the amount of revenue would have had to be fixed at the next revenue settlement, would have been from time to time reduced, and doubtless would soon have dwindled to nothing.

118. It is not necessary for the present question to determine whether before the permanent settlement the zamindars were proprietors of the soil or not. It is clear that they could not make grants for holding lands free from the payment of that proportion of the produce which was payable in money or kind to Government, and that the Government or their duly authorized officers, were alone capable of making such grants. The Government always assumed and exercised the power of making lakhiraj grants at their pleasure; and, after such grunts, the lands were exempt from payment of rent to the zamindars.

119. A great change however was effected by the permanent settlement. The two fundamental measures which were declared to be essential to the objects which the Government had in view in settling the lands permanently, were that the soil should he vested in the landholders, and that the revenue should be fixed for ever; see Regulation II of 1793, s. 1.

120. Regulation VIII of 1793, ss. 4 and 5, laid down rules as to who should be considered the actual proprietors of the soil, and entitled to engage with Government for the revenue. If that had not been done, there would have been great difficulty in determining who had the proprietary rights. Those who paid revenue immediately to Government at the time of the decennial settlement were ordinarily considered to have the proprietary rights, and were allowed to engage with Government for the revenue to be paid in perpetuity for their lands; and the lands for which such engagement was entered into were called an estate. I shall henceforward use the word "estate" in the sense in which it is denned in s. 2, Regulation XLVIII of 1793, viz., "land subject to the payment of public revenue for the discharge of which a separate engagement has been entered into with Government."

121. As soon as an engagement for a settlement was entered into, the amount payable to Government, and that alone, was the Government revenue, and the unpaid kists or installments of that amount were alone treated as arrears of revenue; see Regulation XIV of 1793, s. 2. The rents payable for the lands by the occupiers or cultivators were vested in the zamindars as proprietors of the soil, and they were expressly authorized by Regulation XVII of 1793 to distain for any arrears thereof, and such arrears were termed in the Regulation "the arrears of rent due from their under-farmers, ryots, and dependent talookdars." As soon as an estate was permanently settled, the revenue and rent became perfectly distinct, and were described throughout the Code of 1793 as two separate and distinct things. The revenue was not payable for each biga of land. No particular portion of the sum which the zamindar engaged to pay as revenue for the whole estate, was the separate revenue of any particular biga or portion of the estate. The whole revenue was assessed upon, and paid for; the whole estate, and every biga of land in the estate, whether cultivated or not, was liable to be sold for any arrear of revenue. No distinct biga was liable to be sold separately for any separate or distinct portion of the revenue. The Government had no more power to alienate the zamindar''s rents than the zamindars had to alienate the Government revenue.

122. By Regulation I of 1793, ss. 9 and 10, the landholders were expressly authorized to transfer by sale, gift, or otherwise the proprietary rights in the whole or any portion of their estates, and the grantee of the whole of the proprietary rights in portions of the estates was entitled to have the revenue apportioned, and a separate portion of it charged upon the land in which he had acquired the proprietary right, and to hold such land as a separate estate liable only for that portion of the revenue which was assessed upon it. By s. 52, Regulation VIII of 1793, the zamindars were also empowered to let their lands in whatever way they might think proper, or to grant dependent talooks, subject to certain exceptions and to the restrictions contained in that Regulation which are not material in this case.

123. Now we find that in other parts of the Code of 1793 the words "rent" and "revenue" were used to designate two distinct and separate things, and that in S. 10, Regulation XIX of 1793, the word "revenue" was substituted for the word "rent," which had been used in the Regulation of the 1st December 1790 with reference to the same subject. This of itself is a very strong ground independently of the send ordinarily attached to the words "revenue" and "rent," for concluding that the word "revenue" was not intended to be used as synonymous with the word "rent."

124. The object of the Regulation of the 1st December 1790, and of Regulation XIX of 1793, was the same. Each of those Regulations related to lakhiraj lands, or lands exempted from the payment of revenue to Government. The Regulation of 1st December 1790 was entitled "Regulations respecting lakhiraj lands, or hinds paying no revenue to Government." Regulation XIX of 1793 was entitled "a Regulation for re-enacting with modifications the rules passed on the 1st December 1790 for trying

the validity of the titles of persons holding, or claiming a right to hold, lands exempt from the payment of revenue to Government, not being of the description of those termed Badshahi or Royal," &c.

125. Regulation XIX of 1793 contained the following recital, which shows that the object of it was to prevent unauthorized alienations of revenue payable to Government, and that it had nothing to do with the rents payable to the zamindars (reads).

126. The recital then proceeded to show that numerous grants of the description above referred to had been made. It stated that the Governor-General in Council deemed it incumbent to recover the public dues thus alienated, and pointed out the grounds for legislating in the manner provided by the Regulation with reference to grants already made, and then it proceeded as follows:-- "Upon the above grounds, and with a view to facilitate the recovery of the public dues from lands held exempted under invalid grants, as well as to prevent any similar alienations being hereafter made to the prejudice of the public revenue, ... the following rules have been enacted."

127. The Regulation divided the grants intended to be dealt with into three classes: 1st--Those which had been made prior to the grant of the Dewanny (12th August 1765); 2ndly--Those which had been made between that date and the 1st of December 1790; and 3rdly--Those which had been, or should be, made after the 1st December 1790.

128. It must be remarked that the same words are used in regard to all the three classes of grants, viz., "grants for holding land exempt from the payment of revenue," from which, according to every sound principle of construction, independently of the rule expressly laid down in Regulation XLI of 1793, it ought to be concluded that only grants of same nature were intended, and that the word "revenue" was used in S. 10 in the same sense as that in which it was used in the title and in the other sections of the same Regulation.

129. Giants made prior to the 12th of August 1765 were declared to be valid subject to certain conditions; s. 2. Grants made between the 12th August 1765 and the 1st December 1790, with certain exceptions not material to this case, as well as grants which had been or should be made subsequent to the 1st December 1790, were declared to be invalid. There was, however, a great distinction made between lands included in invalid lakhiraj grants made prior to the 1st December 1790, and those which had been or should be included in grants made subsequent to that date; the former were provided for by s. 3 and subsequent sections, the latter by s. 10. It is very important to attend to this distinction and to the reason for it, as it clearly explains the meaning of S. 10, and shows why the provisions in respect to grants made after 1st, December 1790 were different from those which had reference to grants made prior to that date. The reason for the distinction was this. By the rules

for the decennial settlement, it was directed that the assessment upon the settlement of an estate was to be fixed exclusive and independent of all the then existing lakhiraj lands, whether exempted from the khiraj or public revenue with or without authority. The rule was re-enacted by s. 36, Regulation VIII of 1793. That rule, like the rules made for the decennial settlement, did not extend to grants made after the 1st December 1790. Lands included in any lakhiraj grants made prior to that date, whether such grants were made with or without due authority, were deemed to be separated from the estate in which they were situate, and the rents thereof were excluded from the estimate; on the basis of which the amount to be paid as revenue under the permanent settlement was fixed; see Regulation XIX of 1793, s. 4. If the grants were registered, the lands included in them could not be assessed to the public revenue at all until the grants had been declared by a final judicial decree to be invalid. When such a decree was obtained, and the lands were resumed, they were assessed to the revenue as independent talooks.

130. If the lands exceeded 100 bighas, they were held as separate estates under Government to whom the revenue was declared to belong; see Regulation XIX of 1793, ss. 4, 7, and 8. If the lands did not exceed 100 bighas, the revenue, when assessed upon them, was to belong to the zamindar within whose estate they were situate; see Regulation XIX of 1793, s. 6. Further, although it was declared that the Regulation respected only the question "whether the lands included in such giants were liable to the payment of revenue or otherwise," still the grant was considered to have such a prima facie effect as regarded the proprietor''s rights in the soil, that it was expressly enacted that every dispute between the grantee and the grantor respecting the proprietary rights in the lands was to be determined by the Civil Court; and that the grantees or possessors of the lands until dispossessed by a decree of the Civil Court were to be considered the proprietors of the lands.

131. The case was however different with respect to grants made after 1st December 1790, and before a decennial or permanent settlement of the lands included in them. Such grants having been declared null and void by the Regulation of the 1st December 1790 and by S. 10, Regulation XIX of 1793, were not lakhiraj grants within the meaning of s. 36, Regulation VIII of 1793, or the rule for the decennial settlement of which that section was a re-enactment. The lands included in such grants were deemed part of the estate to which they belonged, and the rents of them were included in the assets of the estate upon the basis of which the Government revenue was fixed; and the lands, notwithstanding the grants, were assessed to the public revenue as part of the estate. The zamindar''s engagements for the revenue included such lands, and they, as well as the other lands of the estate, were liable to be sold for any arrear of revenue. The lands, therefore, were not like the lands included in grants made prior to the 1st December 1790 held free from the payment of revenue, until the grants should be declared invalid by a final judicial decree, and the lands should be resumed.

132. It was only reasonable and just when the grants were treated by Government as void as against Government, and no effect was given to them on fixing the amount of revenue to be paid for the estate, that the zamindars who were assessed and paid revenue for them should be allowed to treat the grants as void as against themselves, and should be authorized to collect the rents of the lands included in such grants in the same manner as they would have done if such grunts had not been made. The grants could not with any justice be held void as against Government as regards the assessment of revenue, and valid as against the zamindars as regards the collection of the rents upon the faith of which they engaged to pay the revenue. It, was not only considered right that the zamindars who had been assessed and had engaged with the Government for the revenue upon the faith that the grants were void, should, in lieu of the revenue for which they engaged, be entitled to collect the rents of the lands; but it was also considered right that they should have the same summary remedies for collecting these rents as if the grants had not existed, and that they should not be compelled to resort to a Court of law to have the grants declared invalid before they could collect the rents. No one would have engaged by a permanent settlement to pay revenue to Government for lands included in lakhiraj grants subsequent to the 1st December 1790, if he had not been authorized to collect the rents before the grants should have been declared void by a decree of the Civil Court. No such decree was necessary before the Government could assess the lands: and it was not considered necessary or expedient to require such a decree, as in the case of grants prior to the 1st December 1790, before the zamindar could collect the rents. It was, therefore, enacted by S. 10, Regulation XIX of 1793, that all grants for holding lands exempt from, the payment of revenue, which had been made after the 1st December 1790, or which should thereafter be made, by any other authority than that of the Governor-General in Council, should be null and void, and that no length of possession should thereafter be considered to give validity to such grant either with regard to the property in the soil or the rents of it. The section then proceeded thus: "And every person who now possesses, or may succeed to, the proprietary rights in any estate or dependent talook, or who now holds, or may hereafter hold, any estate or dependent, talook in farm of Government or of the proprietor or any other person, and every officer of Government appointed to make the collections from any estate or talook held khas, is authorized and required to collect the rents from such lands at the rates of the Pergunnah, and to dispossess the grantee of the proprietary right in the land, and to reannex it to the estate or talook in which it may be situated, without making previous application to a Court of Judicature, or sending previous or subsequent notice of the dispossession or annexation to any officer of Government; nor shall any such proprietor, farmer or dependent talookdar be liable to an increase of assessment on account of such grants which he may resume and annul, during the time of the engagements that he may be under for the payment of the revenue of such estate or talook when the grants may be so resumed and annulled. The manager of the estates of disqualified proprietors, or of joint

undivided estates, are authorized and required to exercise, on behalf of the proprietors, the powers vested in proprietors by this section."

133. It has been shown that, after a permanent settlement, the Governor General in Council could not alienate the rents which belonged to the zamindars as the proprietors of the soil. The words "by any other authority than that of the Governor-General in Council," in S. 10, were applicable to grants to hold exempt from the payment of Government revenue, but were wholly out of place if the words "exempt from the payment of revenue" are to be read as synonymous with the words "exempt from the payment of rent to the zamindar or his heirs," inasmuch as such a grant would not have been binding if made by the Governor-General in Council.

134. Grants made after the 1st December 1790, to hold lands exempt from the payment of revenue, being void, and the zamindars being assessed by the permanent settlement for the revenue whether the lands included in the grants exceeded 100 bighas or not, no such distinction was necessary, with reference to grants made after the 1st December 1790, between cases in which the lands should exceed and those in which they should not exceed 100 bighas, as was made by ss. 4, 5, 6 and 7 of Regulation XIX of 1793 in the case of grants made prior to the 1st December 1790.

135. The words "whether exceeding or under 100 bighas" in S. 10 are clear and intelligible if the word "revenue" is to be read as revenue, but wholly useless and unintelligible if the "word" revenue is to be read as synonymous with "rent."

136. Further it was considered right to give a zamindar who should engage for the revenue the same benefit of nullum tempus as the Government itself would have had as regards grants exempt from the payment of revenue; hence the use of the words "and no length of possession shall be hereafter considered to give validity to such grants," &c. These are intelligible if the section is read as applicable to grants to hold exempt from the payment of revenue, but not if the word "revenue" is to be read as synonymous with "rent."

137. Again, it was fair and equitable that the zamindars, who were assessed and paid revenue for the lands included in their estates, should not only be entitled to the soil and to collect the rents, but that they should have the same power to collect the rents as they would Lave had if the grants had not been made, and that they should not be driven to a Court of law to declare the invalidity of the grants, either for the purpose of entitling themselves to the rents, or establishing their rights in the soil. Consequently S. 10 went on to declare that every person who should possess the proprietary right in the estate should be at liberty to collect the rents from the lands at the rate of the pergunnah, and to dispossess the grantee of the proprietary right in the land, and to reannex it to the estate or talook in which it was situate, without making any previous application to a Court of Justice.

138. Again, it might have so happened that a zamindar would refuse to enter into a decennial or permanent settlement for his estate, or the lands might be let in farm or held khas, or a zamindar might become disqualified. To provide against these or other contingencies under which the estate might be let in farm or held khas, S. 10 enacted that any person who might hold the estate in farm of Government, and every officer of Government appointed to make the collections from any estate or talook held khas, and every manager of an estate of a disqualified proprietor, was authorized and required to exercise the power vested in the proprietor. These words would not he applicable to a lease granted by a zamindar after a permanent settlement to hold land free from rent, though they were peculiarly applicable to grants made before a permanent settlement.

139. Campbell, J., says:-- "It seems to me that, in regard to permanently settled estates, if the word "revenue" be taken to mean the revenue payable to Government, the law treats of an impossible thing, and deals with it in a way which means nothing at all. It was quite impossible that a zamindar or any one else could grant away the Government revenue, that revenue having been already definitely fixed in a lump sum payable by the zamindar. To declare such grants invalid would be a most uncalled-for and meaningless provision." But it must be borne in mind that all the lands in the districts intended to be permanently settled had not been decennially or permanently settled when the Code of 1793 was passed, and consequently it was just as necessary to provide against lakhiraj grants which might be made between the 1st December 1790 and the permanent settlement, as it was to provide for the resumption of similar grants which had been made between the 12th August 1765 and the 1st December 1790. It does not follow that, because it would be difficult to evade the new law by making such grants after the 1st December 1790, such law was not directed against such grants; otherwise it might be argued that the most effectual law was not directed against the acts which it was intended to prevent, and must be construed to apply to something else, because it had effectually prevented the mischief against which it was directed.

140. If S. 10 did not extend to grants to hold lands exempt from the payment of revenue made by a zamindar after the 1st December 1790, and before a permanent settlement of the estate to which the lands belonged, the Regulation contained no provision against such grants. The real question is not whether in regard to grants made after the 1st December 1790, and after a permanent settlement, the words "exempt from the payment of revenue" mean exempt from the payment of revenue to Government, but whether they also mean exempt from the payment of rent to the zamindar. It appears to me, that the word "revenue," as used in the section, means revenue, and nothing else; but that it includes whatever was Government revenue at the time of making the grant to he affected by the Regulation. If a law should enact that whoever should clip the current coin of the realm should suffer a particular punishment, it would include the clipping of whatever was current coin at the time of the clipping; but it would not include the clipping of anything which was

current coin at the time of passing the Act, and which should cease to be current coin before the time of the clipping. So a grant to hold free from the payment of rent would be a grant to hold free from the payment of revenue if made at a time when the rent was public revenue, but not if made after rent had ceased to be public revenue, and had been vested by law in the zamindars as proprietors.

141. If the construction which I put upon the words of S. 10 is correct, the word "revenue" will be read in its ordinary and natural sense, the provisions of the section will be natural and consistent with justice, and force and effect will be given to every word in the section. But if the construction contended for by the plaintiff is the right one, the word "revenue" must be read in two different senses,--one its natural, proper, and ordinary sense, and the other, a sense in which it is never used; the greatest injustice will be done, and no force or effect can be properly given to a great portion of the words which are used in the section.

142. It has been urged that the recital and provisions of Regulation "XLIV" of 1793, show that it was the intention of Government to restrict the powers of the zamindars, and to prevent them from making rent-free grants, in order to protect the heirs of the zamindars, and also the Government revenue. It appears to me that the argument to be drawn from Regulation XLIV of 1793, so far from being in favor of the construction contended for, is a very strong argument in support of the view which I take of the case.

143. The recital is as follows (reads). This recital shows: 1st.--That the Legislature drew a clear distinction between the Government demand or revenue, and the rent payable to the zamindars. 2nd.--That they foresaw that the zamindars having been declared proprietors of the lands would probably grant dependent talooks or leases at an under-rate; and that, by doing so, they would render their property of little or no value to their heirs, and occasion a permanent diminution of the resources of Government arising from the lands in the event of the rent or the revenue reserved by such proprietors being insufficient for the discharge of the public demand upon Their estates. 3rd.--That they did not consider that S. 10 of Regulation XIX of 1793 was sufficient to restrain the mischief so contemplated.

144. No one has ventured to suggest that a grant to hold land free from the payment of all revenue, except a nominal revenue, would not be a grant to hold exempt from the payment of revenue within the meaning of s. 3 of Regulation XIX of 1793.

145. If the word "revenue" in S. 10 is synonymous with rent, and if a reservation of a nominal rent after a permanent settlement is sufficient to prevent the grant from being rent-free, it seems to follow that the reservation of a nominal revenue in a grant made after the 1st December 1790, and before a permanent settlement, would be sufficient to prevent the grant from being a grant to hold exempt from revenue. Yet no one, I presume, would contend that a grant by a zamindar or an

unauthorized officer of Government made before the 1st December 1790, or after the 1st December 1790 and before a permanent settlement, to hold lands of largo annual value to a man and his heirs for ever at a nominal revenue, would not fall within the words "exempt from the payment of revenue" as much as a grant to hold wholly exempt from the payment of revenue would. It would be idle to contend that grants in perpetuity, made without the authority of Government at a mere nominal revenue or rent before the 1st December 1790, were not invalid lakhiraj grants, because they reserved some revenue, and were not therefore grants to hold wholly exempt from the payment of revenue. As I understand the words "exempt from the payment of revenue" in ss. 3 and 10, Regulation XIX of 1793, they mean exempt from the payment of the whole or any part of that which the grantee would have been bound to pay as revenue in the absence of the grant.

146. If, then, S. 10, Regulation XIX of 1793, included grants to hold exempt from the payment of revenue, it operated to prevent grants to hold at a nominal or inadequate rents, and Regulation XLIV of 1793 was unnecessary. If however S. 10 did not extend to rent-free grants after a permanent settlement, there was nothing to prohibit such grants.

147. Now there were two modes by which the Legislature might have provided against the mischief contemplated by them as recited in Regulation XLIV of 1793. They might have prevented grants at inadequate rents for long terms, or in perpetuity, either by compelling the zamindars to reserve adequate rents on all grants, or by restriction their right to make grants for any term exceeding a fixed period. The Legislature thought it right to adopt the latter course, and they fixed the term at ten years, and introduced Regulation XLIV of 1793 into the Code for that purpose. By the 2nd section they enacted:--

That no zamindar, independent talookdar, or other actual proprietor of land, nor any person on their behalf, shall dispose of a dependent talook to be held at the same or at any jumma, or fix at any amount the jumma of an existing dependent talook for a term exceeding ten years, nor let any lands in farm, nor grant pottas to ryots or other persons for the cultivation of the lands for a term exceeding ten years." The section then prohibited the renewal of leases or pottas at any period before the expiration of them, except in the last year; and it concluded by declaring that "all evasions of the prohibitions contained in this section by entering into two separate engagements, leases, or pottas at the same time, dating an engagement, lease, or potta, subsequent to the period at which it may have been actually executed, or by any other device, shall be considered as an infringement of them; and every engagement fixing the jumma of a dependent talookdar, and every lease or potta which has been or may be concluded or granted in opposition to such prohibition, is declared null and void.

I have set out the words of so much of the above section as bears upon the point under consideration, as it is not printed in the ordinary collections of the

Regulations. The section avoided all leases and pottas for the cultivation of lands for a term exceeding ten years, whether they reserved a full rent, or a nominal rent, or no rent at all. It did not require leases or grants for periods not exceeding ten years to reserve an adequate rent, or a nominal rent, or any rent at all. By s. 6 it was expressly enacted, "that nothing in the Regulation should be construed to prohibit a zamindar, independent talookdar or other actual proprietor of land, from selling, giving, or otherwise disposing of any part of his lands as a dependent talook." This provision was, however, subject to s. 2, which declared that the grant should not be for a term exceeding ten years. I have read the precise words of s. 6, inasmuch as the two Judges who formed the majority of the Court, and whose judgment prevailed in Raja Modhnarain''s case S.D.A., 1855, 395, to which I shall presently refer, declared that the power of creating dependent talooks, or granting leases at any rent, was fully accorded; and they referred to s. 6, Regulation XLIV of 1793, in support of that doctrine. Regulation XLIV then proceeded to declare that all grants to dependent talookdars, and all leases and pottas to ryots, with certain exceptions, should stand cancelled by a sale for arrears of revenue. S. 8 provided that nothing in the Regulation contained should be deemed to prohibit actual proprietors of lands from granting leases or pottas of ground for any term of years, or in perpetuity, for the erection of dwelling-houses, or buildings for carrying on manufactures, or for gardens, or other purposes, or for offices for such houses or buildings. Grants for the purposes mentioned in s. 8 were amongst those excepted from the provisions of s. 5, and consequently were binding upon a purchaser at a sale for arrears of revenue. The only distinction made by Regulation XLIV between grants and leases for the purposes mentioned in s. 8 and those for other purposes, was that the former might be granted for any term or in perpetuity, and were not invalidated by a sale for arrears of revenue, whilst the others could not be granted for a period exceeding ten years, and were, according to s. 5, to stand cancelled in the event of a sale for arrears of revenue. So careful was the Legislature to protect leases, whether for a term of years or in perpetuity, for the erection of dwelling-houses, or buildings for carrying on manufactures, or for gardens, or other similar purposes, that such leases were expressly made binding upon a purchaser at a sale for arrears of revenue. Is it probable, then, that the Legislature would have authorized the grantors themselves or their heirs to treat such leases as invalid, if some rent, however nominal, should not be reserved?

148. It may be convenient if I allude in this place to an argument put forward with reference to the following words in s. 1, Regulation XLIV of 1793: "Such engagements" (referring to engagements at under-rates or reduced rates), "if held valid, would occasion a permanent diminution of the resources of Government arising from the lands, in the event of the rent or revenue reserved by such proprietors being insufficient for the discharge of the amount of the public demand upon their estates." It was contended that it was the intention of Government to compel the zamindars, after the permanent settlement, to continue to collect the

Government''s portion of the produce of each biga of land, in order that they and their heirs might be in a condition to discharge the revenue, and that the aristocracy which the Government had created might be maintained, or, to use the words of Trevor, J., "that prevention was considered better than cure," that the Government might not wish to sell for arrears, or that the arrears might not be realized by the sale. I find no such intention declared or even implied in the preamble of Regulation XLIV or in any other part of the Code. It appears to me to rest merely in imagination. The security and resources of Government would doubtless have been diminished, if grants for long terms or in perpetuity made after a permanent settlement at nominal or inadequate rents, had been allowed to stand good as against a purchaser in the event of a sale for arrears of revenue. The mischief contemplated, as regards the injury likely to be done to heirs by improvident grants made by their ancestors, was provided against by s. 2, which rendered void all grants of leases or pottas for a term exceeding ten years. The mischief, as regarded the diminution of the security and resources of Government, was provided against by s. 5, winch declared that all grants, except those included in ss. 7 and 8, should stand cancelled in the event of a sale for arrears of revenue.

149. In considering the question whether the words "exempt from the payment of revenue" in S. 10, Regulation XIX of 1793, were intended to apply to leases or grants made by zamindars or other proprietors after a permanent settlement to hold free from the payment of rent to them or their heirs, it is important to remark that by s. 14, Regulation XLI of 1793, it Was enacted that, in framing the Regulations, the same description and terms were to be applied to the same descriptions of things, in order that rights, property, and all persons and things might be uniformly described throughout the whole of the Code, that in Regulation XIX of 1793 "revenue" and "rent" are used as designating two distinct things; and that in that Regulation the words "grants to hold land exempt from the payment of revenue" were substituted for the words "rent-free," which were used in the Regulation of the 1st December 1790.

150. The following propositions are, I think, clear as regards permanently settled estates: 1st.--That the only revenue payable to Government for an estate is that which the zamindar has engaged to pay to Government. 2nd.--That the zamindars are proprietors of the soil; Regulation II of 1793, s. 1. 3rd.--That, as such, they are entitled to the rents of the lands included in their estates, and to distrain for such rents; Regulations XIX of 1793, and XVII of 1793, ss. 1 and 2. 4th.--That such rents being the property of the zamindars, and not the property of Government, are not Government revenue, and cannot be alienated by Government, and that the zamindars are not bound to account for, or pay over to Government any portion of their rents.

151. It seems to follow: 1st.--That, after a permanent settlement, a grant by a zamindar to hold lands "rent-free" is not a grant to hold free from the payment of

revenue. 2nd.--That such a grant is void as against a purchaser at a sale for arrears of revenue; but that, as long as the revenue is paid, it cannot be treated by Government as a nullity, as affecting their interests injuriously. 3rd.--That a rent-free grant cannot be treated as a nullity by the grantor or his heirs, or by any, person claiming through him.

152. I will now proceed to consider the authorities bearing on the question before us.

153. It was said by Campbell, J., the "there are very few cases "on the subject, because no one ever thought of any other construction than that S. 10 applies to rent-free grants made by a zamindar after a permanent settlement." I find no tradition to that effect in any reported case, or in any history of the permanent settlement. The assertion is not borne out by any treatise, or by the declaration or arguments of any of the Judges or pleaders who were concerned in any of the cases in which the question arose.

154. The earliest case which I have been able to find upon the subject was directly apposed to that construction, and I see no reason to think that the Judges who decided it were wanting in experience. The case to which I refer is that of Guruchurn, Paramanik v. Odayenarain Mundal 6 Sel. Rep., 281. That case, which was cited in argument before us, was decided in the year 1840; more than a quarter of a century nearer than the present time to the date of the enactment upon which we are now called upon to put a construction, and when the Judges must hare had means, at least as good as we have at this day, of knowing what was the general opinion, if there was any, upon the subject. In that case the plaintiff purchased the rights and interests of one Doorga Dass in a patni talook, and sued to recover a tank within that talook. The land in which the tank was made was granted in 1217 B.S. (1809) before the patni was created, to the defendant''s father by the zamindar to be "held rent-free." The Judge gave a decree for the plaintiff upon the ground that no such grant made after the decennial settlement could stand, but, upon appeal to the Sudder Court, the decree was reversed. Mr. Dick said:-- "The argument of the Judge respecting rent-free grants made after the decennial settlement does not apply; that will be applicable should the rights of the zamindar be sold for arrears of revenue, but can never apply to the case of a purchaser of the mere rights and interests of a patnidar." The other Judge, Mr. Tucker, said:-- "The tank has been improperly termed lakhiraj. It is not lakhiraj, for it has not been exempted as such from the general estate for which the zamindar pays revenue to Government. The zamindar himself gave a rent-free grant of it to the appellant''s (defendant''s) father, and subsequently said the talook in which it is situated in patni. The respondent has succeeded to the rights of the patni, but cannot touch the previous grant to the appellant''s father." Here, then, was an express decision, not based upon the ground that the land granted was for a tank, nor upon the ground that the water of the tank was rent or revenue. It was decided upon general principles applicable to all

rent-free grants made after 1st December 1790 and after a permanent settlement.

155. The rule laid down in that case was followed by that of Hurree Mohun Das v. Prankishen Raee S.D.A., 1847, 447. In that case it was held that a grant rent-free of land upon which a tank had been dug was good, even as against a purchaser for arrears of revenue. If s. 8, Regulation XLIV of 1793, had required the reservation of a rent, the grant would have been invalid. The decision is an authority that a reservation of rent was not necessary. The case was decided upon general principles, and no doubt was correctly decided. S. 8, Regulation XLIV of 1793, allows grants to be made for long terms, or in perpetuity, for "other purposes" of a nature similar to those particularly described therein, and a grant for the digging of a tank was no doubt a grant for a purpose within the meaning of s. 8. There was clearly nothing in that section which rendered a reservation of rent necessary. The only question was whether S. 10, Regulation XIX of 1793, had the effect of requiring some rent. Leases under s. 8, Regulation XLIV of 1793, were expressly exempted from s. 5, and were, therefore, good as against a purchaser for arrears of revenue, unless they were rendered void by s. 10. The Court held that it was not lakhiraj under that section.

156. In the case of Baboo Modenarain Singh v. Ameeroonnissa Begum S.D.A., 1852, 967, the plaintiff claimed to recover certain land which had been granted rent-free by his ancestor. It was contended that the grant was void under S. 10, Regulation XIX of 1793, but the Court held that the plaintiff could not repudiate his own act and that of his ancestor? That was decided upon a well-known general principle that an heir claiming through his ancestors cannot invalidate the grant of his ancestors of property which he claims by descent from them.

157. In the case of Sheikh Kadir S.D.A., 1856, 74 the plaintiff sued for the resumption and assessment of certain lands granted rent-free for the purpose of digging tanks. The Principal Sudder Ameen dismissed the suit upon the grounds that the grants were good under s. 8, Regulation XLIV of 1793. The Judge reversed the decision on the ground that the sued on which the lakhiraj depended was invalid. He held that the grant was void under S. 10, Regulation XIX of 1793. The Sudder Court held that the decision of the Judge was incorrect; that the case was one between landlord and tenant under s. 8, Regulation XLIV of 1793, and not under the resumption laws, and they remanded the case.

158. That case was followed by the case of Lalla Huree Sankar Shaha v. Sheikh Bukhtear S.D.A., 1858, 968.

159. In the face of all these cases, I know not how it can be asserted that no one ever thought of any other construction than that which is contended for. The only case in which I find that such a construction was ever put upon the section is that of Raja Modhnarain Singh v. Ahmed Alee Khan S.D.A., 1855, 395. In that case Ahmed Alee Khan was plaintiff. He sued to recover possession of certain lands given to him

by Raja Mitterjeet Singh, the defendant''s ancestor, in 1211 (1804) Hijree, in exchange for a copy of the Koran, and from which the defendant, Raja Modhnarain Singh, the heir of Raja Mitterjeet Singh, had ousted him claiming a right to do so under the provisions of s. 10. The Principal Sudder Ameen held that the grant of the defendant''s ancestor was valid, and that it could not be ignored under S. 10, Regulation XIX of 1793, and he gave the plaintiff a decree for possession of the land to be held rent-free. The Additional Judge, on appeal, held that the plaintiff was entitled to possession upon condition of his paying rent for the land, upon the ground that S. 10, Regulation XIX of 1793, did not sanction the grant of any land made after 1st December 1790 exempt from the payment of revenue. On appeal, two of the Judges of the Sudder Court, Sir Robert Barlow and Mr. B. Colvin, held that the grant was void under S. 10, Regulation XIX of 1793, that the decisions of both the lower Courts were wrong, and that the defendant was entitled to take possession of the estate, notwithstanding the plaintiff had been in undisturbed possession under the grant for upwards of fifty years; and they held that the plaintiff was not entitled to either a proprietary right in the land, or to a right to possession upon paying rent for it. Mr. Dick, however, with his usual good, strong, common sense and earnest desire to do justice, said:-- "I concur with the Principal Sudder Ameen that the grant is not resumable by the heirs of the grantor, and that S. 10, Regulation XIX of 1793, does not apply to the case. The law could not intend to declare that the party who had made the grant could at pleasure resume it, whether given for a valuable consideration or not, or intend to entitle the heirs of such grantor to resume. This would be authorizing such persons to repudiate their own acts and the acts of their ancestors. Grants of the nature in question, quoad the grantors and their heirs, affect not the public revenue. They affect merely their own rental. The grantor continues himself to pay the revenue; and, if he do not, the estate is sold; and then the grant becomes null and void. The law,S. 10, Regulation XIX of 1793, was enacted to prevent alienations ''prejudicial to the security of the public revenue'', not to enable the heirs of proprietors (whose ancestors'' acts are theirs) to profit by their own wrong. The proprietors and their successors, who were authorized to resume at pleasure, are not those who made the grants or their hereditary successors. An auction-purchaser can annul all grants and alienations. This the law declares. All bonafide alienations are binding on those who made them and their heirs. This justice requires, and our precedents have decided." By that decision the plaintiff was deprived of lands which he had obtained for a valuable consideration from the defendant''s father, and of which he had held possession for thirty-four years in the lifetime of the father, and seventeen in the time of the defendant himself after his father''s death. The plaintiff''s pleader, Moonshee Ameer Ally, cited on behalf of his client the case of Guruchurn Paramanik v. Odayenarain Mundal 6 Sel. Rep., 281 to which I have referred; yet the Judges did not in their judgment refer to that case, or give a single reason for holding that S. 10, Regulation XIX of 1793, was opposed to such alienations, notwithstanding it had been expressly decided fifteen years previously, in the case to which I have just

referred and which was brought to their notice, that S. 10 did not apply to rent-free grants made by a zamindar after a decennial or permanent settlement. They added:-- "But the power of creating dependent talooks, or granting leases at any rent, is fully accorded," and they referred in support of that proposition to s. 6, Regulation XLIV of 1793, and to Regulations V and XVIII of 1812, which do not even use the word "rent." This case seems to have been the origin of the impression that grants not reserving any rent are void; but that grants which reserve a mere nominal rent are valid and binding. I cannot hold myself bound by such a decision.

160. The two Judges, in their judgment, referred in support of their construction of S. 10 to the language of the Sudder Court in the case of Sheikh Shufaetoollah v. Joykishen Mookerjee S.D.A., 1848, 460; but they appear to have entirely misunderstood the passage. It is as follows:--

"In the absence, however, of any such provision as that of S. 10, Regulation XIX of 1793, it appears to us that the Courts of Justice must have held that grants" (that is, grants to hold exempt from the payment of revenue) "made at a period subsequent to the date of the permanent settlement are null and void. It is a narrow and contracted view to suppose that the permanent settlement consists in nothing more than the obligation on the part of the zamindar to pay a certain amount of revenue annually to the Government. The settlement is a compact by which the zamindar engages on his part to pay a fixed amount of revenue to the State, and the State on its part guarantees to the zamindar, by means of its judicial and fiscal administration, the integrity of the assets from which that revenue is derived, and which in fact constitutes the Government''s own security for the realization of its revenue. The declaration to the zamindars and other proprietors of land that the jumma assessed upon their lands is fixed for ever (s. 3, Regulation X, 1793) carries with it, by necessary implication, a rule of the nature laid down in S. 10, Regulation XIX of 1793." It is clear that the fixing of the revenue for ever could not have been held to have carried with it by implication a rule that all grants by a zamindar not reserving rent to himself should be void against the grantor himself and his heirs; and that he might consequently sell, and then take away from the purchaser that which he had sold. The suit in that case was to resume and assess invalid lakhiraj lands, not to recover lands which the zamindar or his ancestor had sold. The Court entered fully into the whole case, pointed out the distinction between grants prior and those subsequent to 1st December 1790, and they held that the nullum tempus clause in S. 10 applied to such grants, and that the general provision as to twelve years in s. 14 of the Regulation for the limitation of suits (III of 1793) did not apply to a suit for resumption of lands held under invalid lakhiraj grants. The meaning of the passage referred to is very clear. It entirely corroborates my view of the case. It is this: that even without any express declaration such as that contained in S. 10, grants by unauthorized persons alienating the revenue of an estate would have been void as against Government and all persons who derived title through Government, and that Government guaranteed to the zamindar the integrity of the

assets upon the basis of which the permanent settlement of their estates was made, and that the zamindars should be entitled to the rents of all lands in respect of which they engaged to pay revenue. It did not mean that the Government guaranteed to the zamindars that they might repudiate their own grants or those of their ancestors.

161. The dictum in the second Full Bench case upheld the ruling in Raja Modhnarain''s case S.D.A., 1855, 395. Norman, J., then officiating Chief Justice, after referring to the preambles of Regulation XIX of 1793, and XLIV of 1793, says:-- "Reading these Regulations together, it seems to have been the intention of the Legislature to treat the zamindars as agents or trustees for the Government, and, as such, bound to collect the Government share of the produce from each and every biga of land within their zamindari." With all deference, this appears to me to be in direct opposition to one of the fundamental principles of the permanent Settlement, by which the zamindars were for the first time declared to be the proprietors of the lands. If the zamindars were agents or trustees for the Government for collecting its share of the produce, they would have been bound to pay over to Government the collections when made, and they would not have fulfilled their agency or trust by collecting a mere nominal rent for lands of large value. If they were trustees or agents for Government and not bound to account for, or pay over the collections when made, we have the anomaly of an agent or trustee bound to collect that which he is not liable to pay over, and for which he is not bound to account. The fact is as soon as an estate was permanently settled, the Government became entitled to receive the amount which the zamindar agreed to pay as revenue for the estate, and so long as that amount was duly paid, the Government had no further interest in the lands or the rents of them. If the revenue fell into arrear, the Government had power to sell the estate free from all leases or incumbrances created by the zamindar.

162. Norman, J., proceeds:-- "They (that is the zamindars) are incapacitated from depriving themselves of the right and obligation of collecting revenue which by Regulation XLIV is declared inalienable, i.e., by the zamindar, without the express sanction of Government; and it is in accordance with that principle that all grants by zamindars which exempt the grantees from liability to pay revenue to the zamindar, are declared null and void by S. 10, Regulation XIX of 1793. If therefore the grant now before the Court is to be considered simply as a rent-free grant created by a zamindar since 1790, I should feel bound to agree with the Court below, and say that it is null and void." Here, again, there appears to be a mistake. Regulation XXIV of 1793 did not declare that the Government revenue was inalienable by the zamindars without the express sanction of Government. It merely declared that, according to the ancient and established usages of the country, the dues of Government from the lands were inalienable without the express sanction of Government, unless Government has transferred its rights thereto to an individual for a term or in perpetuity, or fixed the public demand upon the whole estate, &c.

The ancient law, as I shall presently show, was subject to the exception expressed by the words "unless," &c., above referred to.

163. The rule laid down in the second Full Bench case is not even confined to leases and grants of dependent talooks; it extends to grants in fee-simple, or to what may more properly be called grants of the whole proprietary right in any part of an estate. Trevor, J., says:-- "The instrument is a grant in fee-simple of 22 bighas of the grantor''s revenue-paying estate to the grantee, to be held by him free of revenue for ever; and it can in no way he construed as a lease, for there is no annual return or rent made by the grantee as tenant, either in money, labor, or kind. The condition in the grant, if condition it can be called, is only a condition subsequent, and there is no contention on the part of the grantor that the grant is liable to be defeated in consequence of a breach of this condition. It is simply contended that the grant itself is of a nature contrary to the public policy, and one that by Statute has been declared null and void. Had it been a lease, however small the rent reserved, it would have been legal under the terms of s. 8, Regulation XLIV of 1793; but as it is a grant involving that which the zamindar had no power to grant, viz., the Government portion of the produce of the land, granted in perpetuity, it is altogether, it seems to me, illegal and contrary to the policy of the law as laid down in Regulation XIX of 1793." He then refers to the recital in Regulation XIX of 1793 as declaratory of what the common law of the country was, and says:-- "S. 10 of that law, in furtherance of this view of the common law of the country, declares that, ''all grants for holding lands exempt from the payment of revenue, made by zamindars since the 1st December 1790, are null and void, and no length of possession shall be considered to give validity to any such grant either with regard to the property in the soil, or the rents of it." Although Trevor, J., speaks of the grant as a grant to hold revenue-free, it was in its terms, and, as I consider, in substance and reality, merely a grant to hold free from the payment of rent to the zamindar or his heirs. There is a slight difference in the terms of the grant as stated by the Officiating Chief Justice and as stated by Trevor, J. That possibly arose from the translation. It was in substance a grant of land to the grantee and his heirs for ever for digging a tank for the benefit of the villagers. The concluding words of the grant as stated by the Officiating Chief Justice are, "you will dig a tank in this land and make a reservoir of water. We shall have no right in the land. Being vested with the right therein, and bringing it under your possession and seisin, you will continue to distribute water. You will stock the tank with fish, plant on the raised and low banks thereof mango trees, &c., and enjoy the same down to your son''s son, and so on in succession. No rent shall have to be paid for the land. Should we or any of our heirs ever prefer any claim to this, the claim will he void." In Trevor, J.''s statement of the sanad, it appears that the land granted was a piece of marshy ground, for which no rent was paid at the time of the grant. The grantor declared that, after the grant, he would have no right to the land, and that the grantee and his heirs should hold possession in their own right from generation to generation, and then it is said no rent for the land will

be charged, &c. The giant therefore appears to have been a grant, as Trevor, J., calls it, in fee-simple, or more properly, to use the words of the Regulations when speaking of lands in the Mofussil to which the English law does not apply, a grant of the whole of the zamindar''s proprietary rights in that part of his estate without reserving any reversion or any rent or condition. In short, the grantor parted absolutely with all his interest in the land which was the subject of the grant. I should have thought it clear that S. 10 had nothing to do with such a grant; that the grant was not within the spirit of the law, and most certainly that it was not within the letter of it. Trevor, J., however treats the grant as within the letter as well as the spirit; he says:-- "It may be said that the grant in this case, though against the letter, is not against the spirit, of S. 10 of Regulation XIX of 1793, which prohibits only improvident grants," &c. It was certainly to my mind not within either the letter or spirit of the law. He then quotes the words of Mr. Dick in Raja Modhnarain''s case S.D.A., 1855, 395, "grants of the nature in question, quoad the grantors and their heirs, affect not the public revenue. They affect merely their own rental. The grantor continues himself to pay the revenue; and, if he do not, the estate is sold; and then the grant becomes null and void;" and he proceeds thus:-- "This is no doubt in the main, true;" and at the decennial settlement, the Legislature might, had it chosen, have relied on the sale-law to remedy any improvident act done by the zamindars, and restore estates to their original state. But it considered prevention better than cure; and with the former object, keeping in view the common law of the country and the probable improvidence and weakness of the zamindars it had then created, it enacted Regulation XIX of 1793, and thereby declared that all grants of the nature of that before us are null and void, and that no lapse of time shall cure them. It follows that, as they are null and void in their inception, they can be resumed even by the grantor or his heirs at pleasure. If this view of the law were correct, there would have been no necessity to pass Regulation XLIV of 1793. But Regulation XIX of 1793 had nothing to do with the improvidence of the zamindars. It was passed, as shown by its title and preamble, with reference to alienations of the revenue payable to Government. On the other hand, Regulation XLIV of 1793 had nothing to do with alienations of the public revenue, but had reference only to grants of leases or dependent talooks by the zamindars.

164. It is beyond doubt that Regulation XLIV of 1793 had no reference to grants in fee-simple, as they are called by Trevor, J., or grants which passed the whole proprietary rights of a zamindar in the whole or in any particular portion of his estate. Such grants were expressly provided for by Regulation I of 1793, ss. 9 and 10. The whole Code of 1793 was passed on the same day, the 1st May 1793. All the Regulations must be studied together and read as a whole. It is not safe or proper to take one enactment here and another enactment there, and to interpret them without reference to the whole Code: but it is not because the Code must be taken and studied as one entire system that the preamble of one Regulation of the Code is to be read as explanatory of the meaning and intention of a section in another

Regulation. This is what was done in substance by one or more of the Judges in the second Full Bench decision. They construed S. 10 of Regulation XIX of 1793 with reference to the preamble of Regulation XLIV of 1793, and not with reference to its own preamble. Such a mode of construing Regulation XIX is not only at variance with every sound principle of construction, but is in direct opposition to the rule laid down in Regulation XLI of 1793, which enacted, amongst other things, that every Regulation should have a title expressing the subject of it, and also a preamble stating the reasons for enacting it, in order that individuals might be able to make themselves acquainted with the laws, and that Courts of Justice might be able to apply the Regulations according to their true intent and import; see the preamble and ss. 4 and 5, Regulation XLI of 1793. Regulation XIX of 1793 and Regulation XLIV of 1793, and every one of the forty-eight Regulations which were passed on the same day, had its own separate title and preamble. When Regulation XIX of 1793 and Regulation XLIV of 1793, each had its own title expressing the subject of it, and a preamble stating the reasons for enacting it as required by the Regulation XLI of 1793, ss. 4 and 5, it is only reasonable to suppose that those Regulations respectively contained all the provisions which the Legislature deemed necessary with reference to the particular subjects treated of in their respective titles and preambles. Yet the preamble of Regulation XLIV, which alone speaks of the contemplated improvidence of the zamindars and of the necessity of protecting their heirs against it, is taken to explain the meaning of S. 10, Regulation XIX, which was passed to facilitate the recovery of the public dues from lands held exempted from the payment of revenue to Government under invalid grants, as well as to prevent similar alienations from being thereafter made to the prejudice of the security of the public revenue.

165. If the Legislature intended to prevent zamindars from granting dependent talooks or leases at inadequate rents, and to allow them to treat their own grants as nullities if they did not reserve at least a nominal rent, I should have imagined that, independently of the rules laid down in Regulation XLI of 1793, common fairness with regard to those who were to be bound by the law and who had to regulate their dealings according to its provisions, would have induced the Legislature to express that intention in clear and unambiguous language, especially when any violation of the law was to be attended with such serious consequences to unsuspecting purchasers: and I should have expected to find that language in Regulation XLIV, and not in Regulation XIX of 1793, which related to an entirely different subject. The zamindars, and those who purchased from them, had clear and express notice by Regulation XLIV that, with certain exceptions, no grants by zamindars of dependent talooks or leases for periods exceeding ten years would be valid; and no grant by a zamindar of any part of his estate, whether on a term exceeding ten years or not, would be binding on a purchaser at a sale for arrears of revenue. Having that notice, it was for them to regulate their dealings accordingly. But who, without the light of modern construction, could, on reading Regulation

XLIV of 1793, have imagined that there was a section in another Regulation, XIX of 1793, passed with an entirely different object, which rendered a purchaser of a rent-free lease, or dependent talook, or even of an estate in fee-simple, liable to be treated as a trespasser by the vendor or his heirs, and turned out of possession after any length of possession under his purchase. Trevor, J, in the Full Bench case of Sonatun Ghose v. Moulvi Abdul Farar Ante, p. 109, at p. 128, after showing that the grant was an alienation of part of a revenue-paying estate, goes on to say:-- "Alienations after the 1st December were, ipso facto, null and void; they were unauthorized alienations by the zamindar of the Government portion of the produce, as well as alienations of his own share, and were opposed to the common law of the country, by which a portion of the produce of every biga of land belonged to Government. As, moreover, the Government demand on estates had become fixed in perpetuity, it became of the greatest moment to prevent, as far as possible, the decrease of the security of the revenue, and hence the power which was given to the zamindars enabling them at once, without recourse to the Courts, to dispossess the grantee and assess the rents after any lapse of time. The grantee in short was considered as a trespasser, who had, and could have, no right in the eye of the law. It follows, that Regulation XIX of 1793 placed the possessors of grants subsequent to December 1790 in a very different position from that which they held before the passing of that Act."

166. In the second Full Bench case Loch, J., also seems to have considered that, upon the permanent settlement, the zamindars continued to collect as revenue the Government''s share of the produce, and he also relied upon the ancient common law of the country. He says:-- "It has been asked why, if a zamindar is able, as unquestionable he is by law, to alienate any part of his estate by sale or gift, he should be unable to create a rent-free tenure; that as he can give a perpetual lease at a quit-rent, there can be no good reason why he should not be able to forego his rent altogether; for if a rent-free grant be said to be injurious to the estate, a perpetual lease on a quit-rent, which the law allows him to make, might be equally injurious. The reason why such rent-free grants cannot be made is that they are entirely opposed to the theory of the permanent settlement; and it is very remarkable how guarded the law has been on the subject; for while it allows the zamindar to give a lease in perpetuity, it never sanctions such an alienation as a lakhiraj or rent-free grant, and the reason is obvious when the principle of the permanent settlement is considered, which is clearly laid down in the preamble of Regulation XIX of 1793." After reading that preamble he says: "It is obvious that if a zamindar grant lands to any one free of rent, he not only alienates that portion of the assessment on each biga of the land which the law permits him to appropriate, but he also gives up that portion which is the Government revenue, and thereby does a serious injury to the assets of the estate. He relinquishes the quota of the revenue with which each biga of a permanently settled estate was charged at the time of the settlement; and it is no answer to say that the whole estate is liable for

the revenue, for it is not only that the integral estate is liable for the whole revenue, assessed upon it, but each biga of land is responsible for its own quota of that revenue." In another part of his judgment he says: "The reason why such rent-free grants cannot be made is that they are entirely opposed to the theory of the permanent settlement."

167. The argument that after a permanent settlement the zamindars, when they collected the rents of their estate, were collecting the Government''s share of the produce of each biga, as well as their own, appears to me to be founded upon a fiction, and based upon an erroneous view of the object and intent of the permanent settlement. In my opinion, it is a mistake to suppose that after a permanent settlement the Government continued to be entitled to a share of the produce of every biga of land in the settled estate in addition to the amount which the zamindar engaged to pay as revenue. It is an error to suppose that the Government was, according to the ancient law, entitled under all circumstances, and without any exception, to a certain proportion of the produce of every biga of land in cultivation. In stating what the ancient law was, the Legislature very clearly pointed out that it was subject to an exception. The law is defined as follows: "By the ancient law of the country the ruling power is entitled to a certain proportion of the produce of every biga of land demandable in money or kind according to local custom" Regulation XIX of 1793, s. 1. The exception is also pointed out in the following words: "Unless it transfers its right thereto for a term or in perpetuity, or limits the public demand upon the whole of the lands belonging to an individual, leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public, whilst he continues to discharge the latter."

168. In construing the Regulations we must take the law as it was defined by the Legislature with reference to the enactments which they founded upon it; and when they introduced into that definition an exception in the case of a transfer in perpetuity, or of the limitation of the public demand upon the whole of the lands of an individual, we must understand to mean that, as soon as such a transfer should be made, or the public demand upon an individual should be limited in perpetuity, under the operation of the laws which they were then enacting, the Government would cease to be entitled to the promotion of the produce of every biga to which they would have had a right under the ancient law of the country. When a zamindar entered into a temporary engagement to pay a certain sum as revenue for the whole of an estate which belonged to him, and the Government limited the public demand upon the whole of the lands in the estate to the sum which the zamindar agreed to pay as revenue, the Government, according to the law as defined in the Regulation, ceased during the term of the settlement to be entitled to a proportion of the produce of every biga of land in the estate. The public demand upon the whole of the lands in the settled estate was limited to the sum which the zamindar engaged to pay as revenue, and he was left to appropriate to his own use the

difference between the value of that proportion of the produce to which the Government would have been entitled if the settlement had not been made, and the sum payable by the zamindar as revenue under his engagement. In short, so long as he continued to pay the sum which he engaged to pay as revenue, he was to be at liberty, during the period for which the settlement was made, to appropriate to his own use the whole of the assets or rents of the estate, and in so doing, to appropriate to his own use the difference between the value of the Government''s proportion of the produce, that is, the rents payable to the occupiers, and the amount which at the time of the settlement he engaged to pay as revenue. It seems to be a forced construction to hold that the Government continued entitled to its own proportion of the produce, or any part of it, when the zamindars were expressly authorized to appropriate to their own use the whole difference between the value of such proportion and the revenue which they agreed to pay permanently in lien of it.

169. The revenue settlement seems to have been treated, so long as it continued, as a composition entered into by the zamindars for the revenue of the estate, and when the terra for which the settlement, in temporary, was made, expired, the Government again become entitled to its proportion of the produce of each biga of land in cultivation, of which an estimate was made before a fresh settlement was entered into. That was the case under the old law, and then the zamindars were not entitled to enter into any engagements with their dependent talookdars, under-farmers, or ryots, for any period beyond the term of their own engagements with the Government; Regulation XLIV of 1793, s. 1.

170. When, however, a permanent settlement was entered into, the Government ceased to be entitled to anything beyond the amount which the zamindars contracted to pay as revenue, and the zamindars, according to a solemn declaration, became the proprietors of the lands. The property in the soil was vested in them, and they were at liberty "to transfer by sale, gift or otherwise their proprietary rights in the whole or any portion of their respective estates" (Regulation I of 1793, s. 9), and to let their lands in whatever manner they might think proper, Subject to the restrictions in Regulation VIII of 1793; see s. 52 of that, Regulation. They were also authorized to grant dependent talooks; see s. 6 of Regulation XLIV of 1793; and to distrain for the rents due from their tenants; Regulation XVII of 1793, s. 2. They were however expressly restrained at the time from granting leases or talooks for any period exceeding ten years, except for the purposes mentioned in s. 8, Regulation XLIV of 1793, for which they were allowed to make grants in perpetuity; and all leases and grants, with a few exceptions, such as those made for the purposes mentioned in s. 8, Regulation XLIV of 1793, were, in the event of a sale for arrears of revenue, to stand cancelled from the day of sale.

171. S. 6 of Regulation VIII of 1793, and s. 2 of Regulation XVII of 1793, show very clearly that the Legislature did not consider that the zamindars after a permanent

settlement, when collecting the rents of their estates, would be collecting public revenue from their dependent talookdars, farmers, and ryots, or that such talookdars, farmers, and ryots would be paying to Government, through the zamindars, the share of the produce to which under the ancient law the Government would have been entitled if a settlement had not been made; for what was the use of declaring that the talookdars specified in s. 6, Regulation VIII of 1793, viz., those who by virtue of an express stipulation in their sanads or title deeds then paid their revenue through the zamindar, should continue to pay their revenue through him, if it was contemplated or intended at that time that every dependent talookdar or ryot or occupier of land who should pay rent to the zamindar should be deemed to be paying to Government through the zamindar the Government''s share of the produce of the land. Moreover, the kists or installments of revenue payable by the zamindar to Government were not necessarily due at the same time as the installments of rent payable to them. By s. 64, Regulation VIII of 1793, which was passed for the benefit of the under-farmers and ryots, the zamindars were required "to adjust the installments of the rents receivable by them from their under-renters and ryots according to the time of their reaping and selling the produce."

172. In the present case, the grantor in some of the grants was not a zamindar but a mokuraridar, and the question is whether his heir can resume lands granted by him rent-free, though he pays rents to the zamindar, and the zamindar pays revenue to Government. It follows from what I have already stated that, in my opinion, the heir cannot resume the lands.

173. If a grant rent-free by a zamindar who pays revenue to Government is not a grant to hold exempt from the payment of revenue, it follows that a grant made by a tenant of the zamindar to an under-tenant, rent-free, would not be a grant to hold exempt from the payment of revenue. But some of my late colleagues have expressed an opinion that rent-free grants by mokuraridars, as well as rent-free grants by zamindars are grants to hold exempt from the payment of revenue. Upon this subject Trevor, J., says: "The plaintiff in this case is a maurasi ijaradar, or a person who holds the estate in farm of the proprietor. He is, therefore, under S. 10 of Regulation XIX of 1793, authorized and required to collect the rent for the lands at the rate of the pergunna and to dispossess the grantee," that is, the grantee who purchased from his ancestor, "of the proprietary right in the land," &c. Campbell, J., also says: "The word ''revenue'' being in my view used in the sense of the khiraj payable by the ryot or cultivator, it seems to me to be quite immaterial whether the plaintiff is the zamindar or the assignee of the zamindar of the first, second, third, or tenth degree of sub-infestation. The suit may, I consider, be maintained by any person entitled to receive the khiraj."

174. But, if there are sub-infestations, as they are called, or rather ten dependent talooks or leases intervening between the zamindar and the cultivator, each of the

talookdars collects rents from the holder of the tenure next below him, and it is only the last who receives rent, or a share of the produce of the soil, from the actual cultivator. The mere argument that the rents payable by each of the various under-tenants to the landholders under whom they respectively hold is revenue, seems to me to be a strong argument against the correctness of the doctrine that, after a permanent settlement, all rent is revenue within the meaning of S. 10, Regulation XIX of 1793. In Raja Modhnarain''s case S.D.A., 1855, 395 it was held that the grantor could treat the grantee as a trespasser and turn him out of possession, and the Sudder Court went to the extent of reversing the decision of the Zilla Judge, because he held that the grantee to whom the rent-free grant was made was entitled to retain possession of the lands upon condition of his paying rent for them at the pergunna rate.

175. In the Full Bench case of Sonatan Ghose v. Abdul Farar Ante, p. 109 Trevor, J., says: "The grantee, in short, was considered as a trespasser who had, and could have, no right, in the eye of the law."

176. Norman, J., then officiating as Chief Justice, says: "S. 10 of Regulation XIX of 1793 authorized the zamindars to resume or, in other words, to retake possession without a suit." Pundit, J., says: "The law could not provide rules for anything less than the power it had given, viz., that of ousting the lakhirajdar; and so no provision was made for any other limited mode of exercising that power which the landlord may find it expedient to adopt."

177. It was, however, held by the Judicial Committee that a purchaser at a sale for arrears of revenue could not, under s. 5, Regulation XLIV of 1793, treat a talookdar as a trespasser and turn him out of possession, but that he could only recover the same rents from him as the former proprietor could have done if the grant had not been made.

178. If the decision of the Sudder Court in Raja Modhnarain''s case S.D.A., 1855, 395, and the principles laid down in the second Full Bench case, and in the case of Sonatan Ghose v. Farar Ante, p. 109, are correct, that the grantor of a rent-free tenure and his heirs can, under S. 10 of Regulation XIX of 1793, treat the grantee as a trespasser and turn him out of possession the grantor and his heirs will have a greater power as against a purchaser of lands for which no rent is reserved, than a purchaser at a sale for arrears of revenue would have under s. 5, Regulation XLIV of 1793. It appears to me to be a great anomaly that a grantor should have a greater power against the grantee to whom he has sold lands rent-free than a purchaser at a sale for arrears of revenue who claims through the Government adversely to the grantor.

179. It is a general principle of law that a man shall not avoid his own grant, and another that an heir is bound by the acts of his ancestor in respect of lands which he inherits from him. Those principles are founded upon justice and common sense,

for law is intended to suppress fraud, not to encourage it.

180. In the case to which I have just referred, Ranee Surnomoyee vs. Maharajah Sutteeschunder Roy, , the rule by which a bishop was not allowed to invalidate his own grant under the disabling Statute 1 Eliz., c. 19, was referred to for the purpose of illustrating a general principle of construction. The rule did not directly govern the case before the Privy Council, for the question there was whether a purchaser at a sale for arrears of revenue, having a right to treat a zamindar''s engagement with a dependent talookdar as cancelled under the provisions of s. 5, Regulation VIII of 1793, could treat the talookdar as a trespasser, and turn him out of possession or merely enhance his rent to a fair rate. There was no doubt as to whether the auction-purchaser could treat the engagement under which the talookdar held as cancelled. But the principle referred to in the case in the Privy Council is peculiarly applicable to the present case, in which the question is, whether a zamindar can treat his own grant as void, or whether an heir can avoid a grant made by his ancestor.

181. The following remarks of Lord Justice Turner Ante, p. 145 in delivering the opinion of the Judicial Committee, are so pertinent to the present case that I need not offer any apology for quoting them:-- "English lawyers are familiar with the principle of construction applied as early as the time of Lord Coke (see 1 Inst., 45) to the disabling Statute of 1st Eliz., c. 19, s. 5, and in several modern reported cases between landlord and tenant, on clauses of forfeiture in leases. Words which make a bishop''s grant ''utterly void and of none effect to all intents, construction and purposes,'' have been held not to prevent the grant from being good and binding on the grantor, and in some cases confirmable by the successor; and so a proviso in a lease, that it should be void altogether in case the tenant should neglect to do a certain act, has been held only to make it voidable at the option of the landlord. Their Lordships do not cite these as authorities governing this case, but mention them only as illustrating a general principle of construction which for its justice, reasonableness, and convenience must be considered of universal application. In the present case, the object of the Government was that that the jumma should be duly paid, and that the means of paying it should not be withdrawn by the improvident grants of the zamindars who had made default; but cases of default might often arise where do improvident grant had been made, where the talookdars and the ryots held at proper rents, and the default was owing to extravagance, mismanagement, or other causes,--in such cases the Government cannot be supposed to have intended a wanton and unjust disturbance of vested interests."

182. It is to be observed that the principles laid down in the second Full Bench case apply not only to rent-free grants of dependent talooks and leases, but also to grants by a zamindar of the whole proprietary rights in a portion of an estate. This, if possible, carries the doctrine to a more dangerous extent than if it were confined to

leases and independent talooks. Trevor, J., says:-- "The instrument is a grant in fee-simple of 22 bighas of the grantor''s revenue-paying estate to the grantee, to be held by him free of revenue for ever; and it can in no way be construed as a lease, for there is no annual return of rent made by the grantee as tenant, either in labor, money, or kind.....Had it been a lease, however small the rent reserved, it would have been legal under the terms of s. 8 of Regulation XLIV of 1793; but as it is a grant involving that which the zamindar had not the power to grant, viz., the Government portion of the produce of the land granted in perpetuity, it is altogether, as it seems to me, illegal and contrary to the policy of the law as laid down in Regulation XIX of 1793." The grant, no doubt, conveyed all the grantor''s interest in the estate to the grantee and his heirs for ever, and is what we should call in English law a grant in fee-simple, and what I should call in the words of s. 9 of Regulation I of 1793, a grant of the zamindar''s proprietary rights in a portion of his estate. It matters not whether the grant was for a large or a small portion of the estate, for half the zamindari, or for the whole or part of a village or mehal. The zamindar retained no right or interest, reversionary or otherwise, in the land granted, and he reserved no rent for it. Trevor, J., treats it as a grant in fee-simple without any reservation of rent. Such a grant conveys all the proprietor''s rights in the land. If the grant of the 22 bighas of land for a tank, rent-free, was a grant of the Government''s portion of the produce of the lands granted, and therefore void, and the grantee was a trespasser, because the grant did not reserve a rent, a similar grant by a zamindar of the greater part of his zamindari, or of a whole village or mehal, to a man and his heir for ever, without reserving a rent, would be void, and the grantee might be treated as a trespasser and turned out of possession, even though he might Lave paid a large sum as purchase-money for the grant.

183. A grant in fee-simple or a grant of a zamindar''s proprietary rights in a particular part of his zamindari, or in a particular village or mehal, to a purchaser and his heirs forever, does not usually reserve a rent or conditions. A mortgage by a zamindar of his whole proprietary rights in a portion of his estate by conditional sale would not reserve a rent. When foreclosed, the conditional sale becomes absolute; but still it has only the effect of an absolute grant or transfer by the zamindar of his proprietary rights in a portion of his estate without any reservation of rent. Ss. 9 and 10, Regulation I of 1793, provide that the grantee in such a case is entitled to have the revenue apportioned, and to hold the lands included in his grant as a separate estate, subject to only that portion of the revenue which may be assessed upon it under the provisions of s. 10. But if the grant is void under S. 10, Regulation XIX of 1793, because no rent is reserved, the zamindar or his heirs may intercept the grantee, and before he can obtain a butwarra, or get the portion of the estate which has been conveyed to him converted into a separate estate, may treat him as a trespasser and turn him out of possession, and resume the lands which he or his ancestor had sold. Besides, if the grant, as held by Trevor, J., is null and void under S. 10, Regulation XIX of 1793, the Government officers could not legally give effect to it

by carrying out the provisions of S. 10, Regulation I of 1793, in respect of the lands included in it. It is clear that the Legislature never contemplated that such grants would be void if made rent-free. There could be no reason why a man who purchases the whole interest or proprietary right in a particular mehal or other portion of an estate, or obtains a grant, as Trevor, J., calls it, in fee-simple, should pay rent to the zamindar as well as his portion of the Government revenue to be assessed upon the lands conveyed to him. If that part of the zamindari which is sold to him is liable to have its own portion of the revenue assessed, what necessity can there be for any reservation of rent to the zamindar, who parts with all his interests in it? There cannot be any greater necessity for the reservation of vent to a zamindar who sells all his proprietary rights in one-half of his zamindari, than there is for a reservation of rent by a zamindar who sells his whole interest.

184. Regulation XLIV of 1793 does not apply to grants of proprietary rights but only to dependent talooks and leases. It has no reference to grants in "fee-simple," or, as they may be more properly designated in the mofussil, grants of the whole of a zamindar''s rights and interests in a part of his estate. No one will, I think, after reflection and a careful consideration of Regulation I of 1793, ss. 9 and 10, hold that such grants are void under S. 10, Regulation XIX of 1793, if no rent is reserved to the grantor. It is clear that cl. 3,S. 10, Regulation I of 1793, which has been referred to by Norman, J., does not require a rent to be reserved to the zamindar upon the grant of his proprietary rights in the whole or in a portion of his estate; it merely contains directions as to the apportionment of the Government revenue where an estate is divided into two or more distinct portions. The section has nothing to do with the reservation of rent upon the grant of a dependent talook or lease, which by the express terms of cl. 10, Regulation I of 1793, Art. IX, is excluded from the provisions of that clause.

185. Another theory, as regards the effect of S. 10, Regulation XIX of 1793, has been propounded. Norman, J., says:-- "If immediately after the settlement, the zamindaris could have been split up and subdivided, and large portions of them disannexed from the parent estates by rent-free grants without notice to the Government, the security of the Government revenue would have been enormously imperiled. It may be said that if the zamindar made default, the whole estate might be sold, and the grantees of the zamindar would have no title as against the auction-purchaser. If such grants had been permitted, it is by no means clear that zamindaris, when sold, would have realized prices sufficient to cover arrears. There would have been great risk that the boundaries of zamindaris would have become confounded, and that in almost every case, a purchaser at a sale for arrears of revenue would buy little more than a crop of law suits" Ante, p. 804. But a grant of a dependent talook or lease, whether a rent is reserved or not, does not disannex the lands included in it from the parent estate. The lands still remain a part of the estate liable for the revenue reserved for the estate, and to be sold with the remainder of the estate for any arrears of such revenue, and when sold, the lease or talook stood cancelled by

virtue of s. 5 of Regulation XLIV of 1793. I cannot see what interest the Government could have in compelling the zamindar to reserve a rent; or how, if they had such an interest, it could be protected by compelling the reservation of a mere nominal rent. As to the risk of confounding the boundaries of the zamindaris, I am at a loss to understand how the reservation of a nominal, or even of a substantial, rent would prevent such risk. Even if it would have done so, surely some better contrivance than that of encouraging fraud and allowing the grantor or his heirs to commit the injustice of repudiating his own grant might have been devised for that purpose.

186. It has been said by one of my colleagues that we are bound to administer the policy of the law if we can discover it, and he arrives at the conclusion that the whole policy of our revenue legislation is against the creation of rent-free grants. With all respect for that opinion, the doctrine of administering the policy of a law appears to me one of the most dangerous that I ever heard propounded as a rule of construction. We are bound to administer the law as we find it laid down, and not what we may imagine to have been the policy of the law-makers. We ought not to deprive a man of lands which he has purchased, and of which he and his ancestors have been in undisturbed possession for nearly half a century, by administering the policy of a law or of a system of legislation which is not expressed by the law-makers. The policy of our revenue legislation is to secure the revenue. I trust that it is not to be carried out without regard to justice. Who is to be the Judge of what grants are, and what are not, against the policy of our revenue legislation? Is it to depend open the opinion of each individual Judge, or only upon the declared intentions of the Legislature? It was admitted by one of the learned Judges who delivered judgment in the second Full Bench case in 1865, that it might appear unjust and inequitable that any person should have a right to take advantage of his own wrong, and that grants made for consideration should be resumable by the party making them. But he added, "perhaps the policy which dictated the law preferred to protect the rights of the Government without any regard to the hardship or injustice noticed above." What man''s property will be safe if such rules of construction be adopted? Who is to decide whether it is against the policy of the revenue laws to allow a man, for a valuable consideration, to grant a lease at a nominal rent, and to repudiate all leases or grants which he himself has made if they are rent-free? Upon this point various opinions are entertained by different Judges. For my own part, I hold that it was not against the policy of the revenue laws, or of the permanent settlement, to allow a zamindar to avoid his own or his ancestor''s rent-free grants. If the Legislature has declared that all rent-free grants are void, we must administer the law as we find it, however much we may reject it and disapprove of the policy.

187. But the real question is whether, when the Legislature used the word "revenue, "they meant "rent," or meant only that which they expressed. Loch, J., in his judgment in the 2nd Full Bench case, says:-- "The preamble (Regulation XIX of 1793) clearly lays down the principle upon which the revenue was assessed, what part of

that revenue was to be considered as rent (viz., the difference between the assets of an estate and such portion of them as Government might think fit to appropriate), and it distinctly repudiates the zamindar''s rights to make a grant exempt from the payment of revenue, such revenue necessarily comprising rent" Ante, p. 86. The argument fails to prove, to my mind, that that portion of the assets of an estate which Government does not appropriate, and for which the zamindar was not bound to account, is revenue. The argument is that the Regulation shows what part of the revenue was to be considered rent. The conclusion is that the part which was to he considered rent was intended to be included by the Legislature when they used the word "revenue." If the Regulation shows what part of the assets is to be considered as rent, and what part as revenue, why are we to hold that the Legislature intended to include in the word "revenue" that which they intended to be considered as rent? Is it not more reasonable to suppose that the Legislature intended by the word "revenue" that part which was not rent, especially when in the same Code they use the word "rent" as something distinct from revenue: and Loch, J., admits that the zamindar may remit his share of the rent, but he says he has "no authority to remit any portion of the revenue, and therefore that a perpetual lease or a quit-rent which does not provide for the full quota of revenue from each biga of land is as invalid as a rent-free grant."

188. If as stated by Loch, J., the difference between the whole assets of an estate and such portion of them as Government thought fit to appropriate, was rent; rent was the part not appropriated by Government. How then could revenue, which was the part appropriated by Government, comprise rent, which was the part not appropriated by Government?

189. The argument assumes that when a zamindar has engaged for and pays a certain sum fixed permanently as the revenue of an estate, the Government still retain a share in the rent, on that part of the assets of an estate which they have not appropriated. If this is so, what becomes of the declaration made at the time of the permanent settlement by s. 1, Regulation IX of 1793, that the revenue payable to Government had been fixed for ever? If the assets for the sums paid by the ryots are part of the revenue, they surely had not been fixed for ever. It was the very object of the permanent settlement to induce the zamindars to improve their estates, and thus from time to time increase the assets; and for this purpose the Government appropriated as revenue a fixed sum, and left the remainder of the assets to the zamindars. Before the permanent settlement the Government''s share of the assets was liable to frequent variation. It may be asked, if Loch J.''s argument is correct, what part of the assets must be reserved as rent in order to prevent the grant from being exempt from the payment of revenue? If a question arises whether the share which belongs to Government of the assets has or has not been reserved under lease by a zamindar, how is that question to be determined? If it belongs to Government one would imagine that when collected it must be paid over to Government. Yet no one will, I think, contend that a zamindar is bound to pay to

Government any portion of the rents reserved under leases or grants of dependent talooks. I concur with Loch, J., that if it is necessary to reserve a rent at all, it is not sufficient to reserve a mere nominal rent, but if it is compulsory upon zamindars to reserve a rent equal to that portion of the assets to which the Government would have been entitled if the lands had not been permanently settled, how is it to be ascertained whether such a rent was reserved or not, when it is clear that before the permanent settlement the amount payable for revenue was fluctuating and depended upon the will of Government? If a lease or grant after a permanent settlement is to be avoided by the grantor, because it does not reserve that which would have been the Government''s share of the assets if the settlement had not been made, it will be impossible to ascertain whether such rent has been reserved or not. Even if it should be held sufficient if the rent reserved is equal to the full quota of revenue fixed by the permanent settlement for each biga, inextricable confusion will arise, and it will be necessary in every case in which a grant or lease is disputed to raise an issue whether the amount reserved bears the same proportion to the actual produce of the land included in the grant as the assessment upon the whole of the estate bears to the whole of its actual produce; and the trial of such an issue will involve the same inquiry as would be necessary if the grantee had had the proprietary right in the lands conveyed to him and was applying for a batwarra; and this will be the case even if the grant comprised only a few bighas or katas of land. Indeed, as it has been already shown, after a permanent settlement, no particular portion of the whole revenue is payable for any particular biga; and even if it were so, it would be almost impossible after extensive improvements in an estate, to say what proportion the revenue of any particular biga of land bears to the whole assets of the estate. In the second Full Bench case, the land in question was at the time of the permanent settlement a piece of low marshy land which yielded no assets. In such a case, it would be impossible to say what proportion of the revenue was payable for it. Pundit, J., with his great acuteness and experience, foresaw the difficulty--I may say the impossibility,--of compelling a zamindar to reserve on every grant a rent equal to the full quota of revenue for each biga of the lands granted, especially when no rent for such lands was paid at the time of the settlement. He said:-- "During the progress of the decennial settlement and in 1793, when the laws of that year were enacted, it was thought to be a sufficient check against acts supposed to be injurious to the public rights to declare that no grant or alienation should be made rent-free; and it was not considered at all expedient to rule further that the rent reserved in a lease should be equal to the proportionate revenue due to the government from the land leased out. It was not an easy matter to fix this proportion; and it was not thought proper to impose such a troublesome condition, because it had already been ruled that the zamindars generally could not settle for more than ten years, and that fraudulent or wrongful settlements made by them were not binding upon auction-purchasers" Ante, p. 89. I cannot discover what Pundit, J., relied upon, when he stated that when the laws of 1793 were enacted, it was thought to be a sufficient check to declare that no grant or alienation should be

made rent-free. He must, I presume, have relied upon the authority of the Sudder Court in Rajah Modhnarain''s case S.D.A., 1855, 395, to which I have already adverted.

190. Trevor, J., holding that a mere nominal rent was sufficient, had not to contend with the difficulty of deciding what amount of rent it would be necessary to reserve in order to prevent a grant from being void under S. 10 as a grant exempt from the payment of revenue. He says:-- "the mere fact of the land granted being unculturable at the time the grant was made, does not render that legal which, under other circumstances, would not be so. The fact of its unculturableness was an accident of the moment, and as the land was a portion of the decennially settled estate, the whole area of which forms the security for the Government revenue, it could not be alienated revenue-free without the consent of Government; Neither can the fact of the grant being for the alleged benefit of the villagers render that legal which is illegal in consequence of its being to the detriment of the interest of the State."

191. The decision that a nominal rent is sufficient, gets rid of the difficulty of deciding what amount of rent would be sufficient to prevent a grant from being a grant to hold exempt from the payment of revenue, if such grants are at all within the meaning of S. 10, Regulation XIX of 1793. But the decision is open to this palpable objection, that, if a rent-free grant of lands of large value is void in consequence of its being detrimental to the State or to the interests of the zamindar''s heirs, such interests would not be protected by the reservation of a merely nominal rent.

192. A question also seems naturally to arise:--Were Lord Cornwallis and his Council so short-sighted as not to see that there could be very little difference, as regards the interests of the State or those of the heirs of a zamindar, whether a grant was rent-free, or subject to only a nominal rent?

193. Moreover a zamindar has full power to assign by way of gift, sale, mortgage, or otherwise the rents of any of the dependent talooks or leases on his estate or any portion of them. There is nothing in S. 10 which, by any interpretation, can be held to prohibit this, although the grants would, as against a purchaser at a sale for arrears of revenue, convey no interest in the rents of the estate to the grantee. What good reason could there have been to compel a zamindar to reserve some rent from the tenant on the grant of a talook or lease when he could assign over to a third person the rent which he had reserved as soon as he had received it? How much better would the state of the heirs of a zamindar be, if the zamindar should grant a lease reserving a full rent, say of Rs. 10,000 a year, for the lands, and should assign over the rent the next day to a stranger and his heirs for ever, than they would be if he were to grant a lease without reserving any rent at all. Further, if in consideration of a large premium, a zamindar should grant a lease at a nominal rent of land worth Rs. 10,000 a year, he would be guilty of extortion, if he should collect

more than the nominal rent so reserved; see Regulation VIII of 1793, s. 52. But if a lease rent-free of such lands is void under S. 10, Regulation XIX of 1793, he might, and indeed would, be required by that section to resume the lands, and could then let it for a full rent.

194. It was contended on behalf of the plaintiff, and it was held by some of the Judges in the second Full Bench case, and it is the opinion of some of the Judges of the present Full Bench, that the word "revenue" was used in S. 10, Regulation XIX of 1793, as well as in the laws before the decennial settlement, to express either revenue belonging to Government or rent belonging to the zamindars, or to use the words of Campbell, J., "in a shifting and interchangeable sense, and sometimes synonymously to mean the same thing." In the Regulations prior to the decennial settlement, no doubt, the word "revenue" included rent, not because the same word was intended to refer to two different things, but because at that time the rents of lands were Government revenue. The Regulation of 1st December 1790, in using the words "rent-free grants" included lakhiraj grants or grants exempt from the payment of revenue to Government, because at that time, if the rent was alienated, the revenue which belonged to Government was ipso facto alienated.

195. I cannot find any inconsistent use of the word "revenue" in Regulation XIX of 1793, or in any of the other Regulations of that Code, or any synonymous use of the words "revenue" and "rent." The instances which have been specified, in which it has been asserted that the word revenue was used in the sense of the zamindar''s rent do not, in my opinion, support the assertion. The use of the word in s. 1 of Regulation XLIV of 1793, and in s. 11 of Regulation XIX of 1793, were the only specific instances given as regards the Code of 1793 in which it was said that the word "revenue" was used in a double sense. Regulation III of 1828 was also referred to for the purpose of showing that the words "revenue" and "rent" were used synonymously, though that fact, if it had been so, could have but little bearing upon the question as to the sense in which the word "revenue" was used in Regulation XIX of 1793. Loch, J., in his judgment in the second Full Bench case, has very clearly shown that the word "revenue," as used in s. 11, Regulation XIX of 1793, refers to revenue in the ordinary sense of the word, and that it was used in that section to denote the revenue on resumed lakhiraj lands under 100 bighas, which was given up to the zamindars by s. 6 of that Regulation, and was assessed under s. 9. It was revenue, and not rent, as a reference to ss. 6, 9 and 11 will show. The words which are referred to in Regulation XLIV of 1793 are those in which it is said:-- "It is at the same time essential that proprietors of land should have a discretionary power to fix the revenue payable by their dependent talookdars, and to grant lease, or fix the rents of their lands, for a term sufficient to induce their talookdars, &c., to improve the cultivation of their lands, &c." The word "revenue" is used in the passage above quoted in the same sense as that in which it is used in s. 2, Regulation XVII of 1793, by which zamindars are authorized to distrain upon their under-tenants and ryots and upon the talookdars paying revenue through them for arrears of "rent" or

"revenue." The word "revenue" in both these Regulations refers to the dependent talookdars mentioned in Regulation VIII of 1793, s. 6, who were to continue to pay their revenue through the zamindars. The word "revenue" both in Regulation XVII and in Regulation XLIV was therefore used in its ordinary and strict sense.

196. Regulation III of 1828 referred to grants of lands which the Government were entitled to resume, and necessarily referred to grants made prior to the 1st December 1790, when, as I have already endeavoured to show, a grant rent-free was really and actually an alienation of the Government revenue.

197. Loch, J., in his judgment in the second Full Bench, refers to the in discriminate use of the word "revenue," but he does not concur in that use of it. He says:-- "Another element of confusion must be got rid of, viz., the interpretation put upon the word ''revenue'' in Regulation XIX of 1793. It has been said that the word is used indiscriminately to mean either revenue or rent according to the context. This appears to be a mistake. The word ''revenue'' is used in its proper meaning throughout the Regulation, and is not convertible with rent, though it comprises rent. A consideration of the purport of the law will at once show that the Legislature was dealing with a question of revenue only."

198. The word "revenue" and the word "rent" were used in the Code of 1793, in many places, as I have already shown, in order to describe two very different things; the former meaning Government revenue, the latter meaning the rents payable to the zamindars by their talookdars, farmers, and ryots. It would therefore have been quite contrary to the rules contained in Regulation XLI of 1793, to use the word "revenue" as applicable to the zamindar''s "rents" or the word "rent" to express the Government "revenue."

199. By Regulation XLI of 1793, it was enacted that in the Regulations the same designations and terms should be applied to the same descriptions of things, in order that rights, property, tenures, and, generally, all persons and things should be uniformly described by the same designations and terms throughout the Judicial Code: and so careful was the Legislature with respect to this important subject that it was directed by s. 16 that, in translating the Regulations, the translator was to he particularly careful to preserve the same uniformity. The Legislature knew full well what they were about, and, therefore, in re-enacting with modifications the Regulation of the 1st December 1790, they substituted the word "revenue" in S. 10 for the word "rent," which was used in the corresponding section of the Regulation of the 1st December 1790. Notwithstanding the substitution of the word "revenue" for the word "rent," for which the Legislature must be supposed to have had some good reason; and notwithstanding the preamble and enactments of Regulation XLI of 1793, some of nay colleagues held that the word "revenue" was used in S. 10 of Regulation XIX of 1793, to express two different things; one of them in particular says:-- "I am compelled to conclude that the word ''revenue'' at that time was not always employed to mean only the revenue demandable by Government, but that it

was also loosely used to comprise the rent recoverable by the zamindar who was accountable for the revenue." To arrive at such a conclusion, we must hold that the Legislature were themselves violating in S. 10, Regulation XIX of 1793, a rule which, by another Regulation of the same Code, Regulation XLI of 1793, passed on the same day, they declared to be essential to enable Courts of Justice to apply the Regulations according to their true intent and import; see the preamble of the Regulation XLI of 1793.

200. But the use of the words "revenue" and "rent" in the same Code for the purpose of designating sometimes the same thing, and sometimes two distinct things, would have been not only a violation of the express rule laid down in Regulation XLI of 1793, but in contravention as well of the principles by which the scientific use of language is regulated as of the rules of legal construction. It was wisely remarked by Locke in his Essay on "the Human Understanding" speaking of the abuse of words, that "words fail to lay open one man''s ideas to another''s view, first, when men have names in their mouths without any determinate ideas in their minds whereof they are the signs; secondly, when they apply the common received names of any language to ideas to which the common use of that language does not apply them; and thirdly, when they apply them very unsteadily, making them stand now for one, and by and by for another, idea" Bk. iii, Ch. 10, s. 23. He points out how great is the concernment of every man as to the meaning of the laws which he is to obey, and which draw inconveniences upon him when he mistakes or transgresses them. "It is hard," he says, "to find a discourse written on any subject wherein one shall not observe, if he read with attention, the same words (and those commonly the most material in the discourse, and upon which the argument turns) used sometimes for one collection of simple ideas and sometimes for another, which is a perfect abuse of language. Words being intended for signs of my ideas to make them known to others, not by any natural signification, but by a voluntary imposition, it is a plain cheat and abuse when I make them stand sometimes for one thing and sometimes for another" Bk. iii, Ch. 10, s. 5.

201. I do not believe that either the Legislature of 1793, or the drafter of the Code of Regulations which was passed in that year, is open to the imputation of having used the word "revenue" in Regulation XIX of 1793, unsteadily in a double or shifting sense. It was the very object and intention of Regulation XLI of 1793, to prevent any such abuse of words, and the Legislature appear to have had the remarks of Locke in their minds when they framed that Regulation. If any hardship and injustice has been caused from the use of the word "revenue", in S. 10, it is not, in my opinion, owing to the abuse of the word '"'revenue" by the Legislature or by the farmer of the Regulation, but by the misuse of the word in the interpretation of the law.

202. I have already quoted a passage from Locke on the abuse of words. I will now refer to another passage from the same author on the subject of interpretation of words. He says (still speaking of the abuse of words):-- "Nor had this mischief

stopped in logical niceties, or curious empty speculations; it had invaded the great concernments of human life and society; obscured and perplexed the material truths of law and divinity; brought confusion, disorder, and uncertainty into the affairs of mankind; and, if not destroyed, yet in a great measure rendered useless, these two great rules, religion and justice. What have the greatest part of the comments and disputes upon the laws of God and man served for, but to make the meaning more doubtful, and to perplex the sense? What have been the effects of those multiplied curious distinctions and acute niceties, but obscurity and uncertainty, leaving the word more unintelligible, and the reader more at a loss? How else comes it to pass that princes, speaking or writing to their servants, in their ordinary commands, are easily understood; speaking to their people, in their laws, are not so? And, as I remarked before, does it not often happen that a man of an ordinary capacity very well understands a text or a law that he reads, until he consults an expositor, or goes to Counsel, who, by the time he had done explaining them, makes the words signify either nothing at all or just whatever he pleases" Bk. iii, Ch. 10, s. 12. Again he says:-- "There remains yet another more general, though perhaps less, observed abuse of words, and that is, that men having, by a long and familiar use, annexed to them certain ideas, they are apt to imagine so near and necessary a connexion between the names and the signification in which they use them, that they forwardly suppose one cannot but understand what their meaning is; and, therefore, are apt to acquiesce in the words delivered, as if it were past doubt, that in the use of those common received sounds, the speaker and hearer had necessarily the same precise ideas. Whence presuming that when they have in discourse used any term they have thereby, as it were, set before others the very thing they talk of, and so likewise taking the words of others as naturally standing for what they themselves have been accustomed to apply them to, they never trouble themselves to explain their own, or to understand clearly the meaning of others" Id., s. 22.

203. So it seems to have been in Raja Modhnarain''s case S.D.A., 1855, 395. The Judges, having been in the habit in resumption suits of treating rent-free grants, made between the 12th August 1765, and the 1st December 1790, before the decennial settlement as illegal alienations of the Government revenue, appear to have assumed, as a matter of course, that the word "revenue" in S. 10, Regulation XIX of 1793, must necessarily have been used by the Legislature in the sense in which they had been accustomed to apply it, and consequently that all rent-free grants were grants to hold exempt from the payment of revenue.

204. In construing a law, a Judge is bound to give effect to what he believes to be the intention of the Legislature. That intention, however, must he collected from the words which the Legislature have used, and not from importing into the law any of the Judge''s own notions of policy, or any ideas of his own as to what may or may not have been the general policy or intention of the Legislature. He ought not, as was stated by the Privy Council in the case to which I have referred, "to suppose that

the Government intended to sanction a wanton and unjust disturbance of vested interests." It was stated by the Legislature in 1793 that in consequence of the laws which were then enacted, "land must become the most desirable of all property." We ought not without the clearest expression of the intention of the Legislature, to put a construction upon any part of the law which, to use the words of the Judicial Committee in the case cited, "will render the title to landed property necessarily uncertain;" and thus to render it the least desirable investment for capital.

205. In Sheehy v. Lord Muskerry 1 H.L. Ca., 576, at p. 593 in the House of Lords, Lord Cottenham says:-- "Courts of Law and Equity can only discover the intention from the terms used, and are not at liberty to speculate upon the existence of any intention not consistent with the plain and obvious meaning of such terms." To use the words of Lord Brougham, in the case of Fordyce v. Bridges Id., 4, "we must construe a Statue by what appears to have been the intention of the Legislature; but we must ascertain that intention from the words used, and not from any general inferences to be drawn from the nature of the objects dealt with by the Statute."

206. Campbell, J., says:-- "Hard cases make bad law," but it must not be supposed that every decision which causes a hardship is necessarily good law. I wish I could say that no bad law had ever been made, except that which had its origin in an earnest desire to avoid a hardship.

207. We should bear in mind the words of Lord Bacon:-- "Let Judges beware of hard constructions and strained inferences, for there is no worse torture than the torture of laws." And again:-- "Let no man weakly conceive that just laws and true policy have any antipathy," and that "the principal part of a Judge''s office is a wise use and application of laws."

208. I have not alluded to Regulations V and XVIII of 1812, which repealed s. 2 of Regulation XLIV of 1793, and by which zamindars were declared competent to grant leases for any period which they might deem roost convenient to themselves and their tenants, and most conducive to the improvement of their estates. Those Regulations, having been passed long after the Code of 1793, could have no material bearing upon the question as to what was the real intention of the Legislature in 1793. The question, however, under consideration, is most important as regards leases granted under the provisions of Regulations V and XVIII of 1812, for if leases not exceeding ten years were rendered void by S. 10, Regulation XIX of 1793, if no rent was reserved, leases or other grants made under the subsequent Regulations for periods exceeding ten years or in perpetuity are also void if no rent is reserved. If it were necessary to reserve some rent in those grants or leases which, by virtue of s. 2 of Regulation XLIV of 1793, could be made only for a term not exceeding ten years, it was equally necessary to reserve some rent in those leases which, on account of the purposes for which they were made, were allowed by s. 8 of that Regulation to be granted for any term or in perpetuity; so with regard to all leases which have been or may be granted under Regulations V and XVIII of 1812. If

the decision of Trevor, J., is correct, every grant in fee-simple by a zamindar or patnidar in which a nominal rent at least has not been reserved, is null and void.

209. The purchase-money for the lands in the present case was not largo, the sums paid for the several grants varying from Rs. 200 to Rs. 100 and less; but that does not affect the principle. The small property involved in this decision is probably as important to the defendant as his vast possessions are to the richest and proudest nobleman in the country. They are probably his birth-right and inheritance upon which he and his family are dependent, and of which the resumption may reduce them from comparative comfort to want and penury. It is my duty to give this case as calm and deliberate and careful a consideration as if the property were worth lakhs of rupees. The case will form a precedent for the future upon a most important subject, and much injustice may be caused by an erroneous decision. I have never entertained the slightest doubt upon the question, but considering that so many of my honorable colleagues entertained a different opinion, I have gone more fully into the case and expressed the reasons for my judgment at greater length than I otherwise should have done.

210. Since the second Full Bench case was decided, I find another case in which land granted rent-free for a tank was held liable to resumption; see Judoonath Sircar v. Bonomalee Mitter 2 W.R., 295. In that case a Division Bench of this Court held that a tank granted rent-free subsequently to the permanent settlement was liable to resumption, there being nothing to show that it was the intention of the grantor that the tank should be a public benefit: and the Judges in that case expressed an opinion that it was not desirable that the doctrine upon which the grant in the second Full Bench case was upheld, should be strained or carried too far. It is said by Trevor, J., that "the grantee may have a remedy against the grantor in some form or other." What that remedy is, is not pointed out, and from the use of the word "may," it seems very doubtful whether my late colleague who made the suggestion was very certain in his own mind that any remedy actually existed. It is evident that he had no very clear conception of the mode in which the remedy was to be obtained. For my own part I cannot see what remedy the grantee or his heirs could have, if the heirs of the grantor be held entitled to resume the lands, and to evict them after an undisturbed possession of nearly fifty years. At any rate, I should feel for a man who should be deprived of his estate under such circumstances, and be driven to seek for a legal remedy in the Courts of Judicature, commencing with the Court of original jurisdiction in the Mofussil, and probably, after long litigation and harassment, ending with a special appeal to this Court in which various opinions would probably be entertained.

211. A zamindar may have sold lands to be held rent-free for a term of years in order to raise money to improve other parts of his estate, and may have expended for that purpose every rupee of the purchase-money which he received; or he may have let lands rent-free for a term of years, upon condition that the tenant should

clear jungle or otherwise improve them; or he may have sold them For a long term of years for the purpose of erecting houses or manufactories, or other buildings upon them, and he may have expended the purchase-money in improving his estate; or he may have granted lands rent-free for a term of years, or for the life of a particular individual, or absolutely, in order to make provision for a wife, or daughters, or other dependants, or for the purpose of erecting and maintaining a school, or a scholarship, or an hospital, or for some other charitable purpose. The zamindar himself may be too honest and too honorable to invalidate his own grant and to resume the lands; but if the construction put upon Regulation XIX of 1793 by some of my colleagues in this case is correct, it will be compulsory upon the manager of his estate, if he should become disqualified by insanity or for any other cause, to resume the lands, to treat the occupiers as trespassers, and to turn them out of possession. The zamindar may die leaving his heir a minor, and the Court of Wards may be compelled to resume the lands, or he may die leaving a son less scrupulous and honest than himself, and such heir will be enabled to frustrate the intentions of his father and to resume the lands, although he may, in some of the cases supposed, have received the whole benefit of the purchase-money expended by his father in improving the other parts of the estate which has descended to heirs. If Trevor, J., is correct in holding that the section extends to grants in fee-simple and to grants of proprietary rights in a portion of an estate, the above remarks will apply to all cases of the transfer of such proprietary rights for purposes such as those above-mentioned, and even to all absolute or conditional sales in fee-simple of parts of an estate upon which no rent is reserved. The grantee may, in addition to the purchase-money which he paid, have expended largo sums in improvements; he may have counted upon the property which he purchased as a provision for himself and his family, and yet, according to the construction contended for, he is liable to he treated as a trespasser, to be turned out of possession by the grantor or his heirs, and to he exposed to all the misery, to all the harassment, and to all the torture, of finding, perhaps in his old age, that he is destitute, or upon his deathbed, that he is penniless, and that his wife and family are to be turned out of the dwelling-house which he had erected for their comfort, and to be cast adrift upon the world without any provision for their maintenance; and all this on account of some imaginary general policy of our whole revenue legislation, which is not expressed by the Legislature, and of some unknown and undeclared theory of the permanent settlement, of which he was not aware, and had no means of acquiring a knowledge.

212. In this very case the grants now sought to be set aside were made before the decision in Raja Modhnarain''s case S.D.A., 1855, 395, and when, according to the earlier decisions of the late Sudder Court, such grants were valid.

213. If it had been expressly declared that a zamindar should not be allowed to grant a lease or a dependent talook without reserving a rent, either nominal or equal to the actual value of the land, I should not attempt to set up my own views of

policy against the declared intentions of the Legislature. I have to determine what the law is which the Legislature has enacted, not what it ought to be, or whether it is just or unjust. But I am to judge of the intentions of the Legislature from the language which they have used; and without the clearest and most unambiguous expressions, I cannot attribute, nay, I may say, I cannot impute to Lord Cornwallis and to the distinguished men who formed his Council, a policy so narrow-minded, so obstructive of progress, so shortsighted, so mean and paltry, so utterly at variance with all the solemn declarations of Government, so fraught with injustice, and so conducive to fraud, as that which has been contended for on the part of the plaintiff.

214. I hold that S. 10, Regulation XIX of 1793, does not apply to rent-free grants made by zamindar after a permanent settlement of his estate; that there is no law which prohibits a zamindar from making rent-free giants of permanently settled lands, whether such grants are intended to pass the whole proprietary rights in the lands or merely to create dependent talooks or lease-hold interests, and that neither he, nor his heir, nor any person claiming through him, can invalidate such grants, or resume the lands, or compel the occupiers to pay rent for them.

215. I am glad that I have been able to arrive at this conclusion, and I rejoice that having regard to what I conscientiously believe to have been the real intention of the Legislature, I am able to pronounce a judgment consistent with justice and right. The minutes of the three Judges which were sent in to the Registrar having been held not to be judgments, and the remaining Judges of the Full Bench being equally divided in opinion, the opinion of the Chief Justice will prevail according to the provisions of s. 36 of the Letters Patent. The cases will be sent back to the Division Bench, who will be informed that a rent-free grant made by a zamindar of a specific portion of land after a permanent settlement of the estate to which it belongs, is valid as against the grantor and his heirs, or a purchaser by private sale of the estate.