SELECTIONS

FROM THE

RECORDS OF THE GOVERNMENT

OF THE

PROVINCE OF OUDH.

GROVES.

SUMMARY of correspondence on the subject of Groves throughout the Province of Oudh.

In paras 14 to 20 of the Roy Bareilly Settlement Report for the year ending 30th September 1867, Major R. Ouseley made certain observations on Rules I, II, III, and IV, of Circular No. 63 of 1863, relative to the tenure of groves and fodder lands, and the Financial Commissioner directed Commissioners to report their opinions and also those of European and native Settlement Officers in the Province (vide annual Administration Report, Part II, Settlement, 1867) as to whether any alteration in the existing rules was called for.

The following is a summary of the replies received :—

Rule I. The grove may have been planted by a person who at the time of planting it was possessed of the proprietary right in the village, and though the latter may now have passed from him, yet he has continued to maintain possession of the grove. In such cases the tenure is of the nature of an under proprietary right, the grove being the vestige of their former proprietary right retained by the old zamindárs. In talukdárí villages such tenures should be treated as under proprietary tenures, and in other than talukdárí villages they should be placed under the same category as independent chuks, resumed rent free holdings &c., the right of property in the land being vested in the occupant of the grove.

The Settlement Officer, Roy Bareilly, observes that the rule does not provide for cases which relate to "land on which stood a bâgh, and which is now bare, and may be the best cultivated land in the village, and has been assessed as such by the Settlement Officer; nevertheless this land has always been held and is still held rent free simply because it was once a bâgh or granted or reserved for planting a bâgh on, and therefore excluded from the rent roll, and consequently during the native rule unassessed."

Lucknow Division.—Mr. Capper, Officiating Commissioner, remarks,—

"In the case referred to in section 3, Rule I, of circular No. 63 of 1863, the ex-proprietor of the village has retained proprietary possession of the chuk, and is liable to pay the revenue assessed on the chuk unless he is otherwise exempted. This revenue plus the fixed percentage, cost of collection, would ordinarily, but not necessarily, except in talukás, be paid through the malguzár of the village within whose area the chuk is situated."

Major Chamier, Settlement Officer, Barabunkee, concurs with Mr. Capper; Mr. Harington, Officiating Settlement Officer Lucknow, would propose no modification of the existing rule; but Mr. Butts, Assistant Settlement Officer, records an opinion "that the land belongs to the ex-proprietor, as much as his sír lands would in talukdárí villages or as any independent chuk would in non-talukdárí villages. If he had held it free throughout limitation, and it is not now assessed, he is entitled to hold it rent and revenue free. If it is assessed he is liable for such assessment and the usual expenses for collection. His right in the trees and the land is absolute, and he can remove and replant trees without the interference of the landlord." Mr. H. S. Reid, Commissioner of Lucknow, observes, that in such cases as are noted by the Settlement Officer Roy Bareilly "the owner of the grove should not be entitled to hold cleared land rent free, if it is assessed with revenue. He should be bound to pay the Government demand assessed on the land. Similarly if the groves in the village occupy more than one tenth of its area and the excess is assessed, the sum assessed should be spread rateably over the owners of the groves, be they proprietors or ex-proprietors or under-proprietors."

Of the native officers in the Lucknow district, Extra Assistant Commissioner Pundit Bhaskur Rao is of opinion that where proprietors of groves have obtained a decree they are supposed to be the owners of the land and of the trees

planted thereon, but where the grove lands were found to be under cultivation at annexation they should be assessed at half the rate, and when a zamindár would wish to fix rent on groves in consideration of "sardarakhti," to which he has all along been entitled, his doing so cannot be considered otherwise than in accordance with the ancient law of the land. He also thinks that rent might be fixed with propriety on groves when the trees have been removed.

Extra Assistant Commissioner Sheo Sahai states that if the owner of a grove fails to replant it after the trees thereon have been cut down, the land should be assessed. Sadr Múnsarrim Ikramúllah Khan is of opinion that old groves, as also groves which were included in the cultivated area on account of the trees thereof being too young at the time of survey, should not be assessed, or in other words as long as the grove has the appearance of a grove, the rightful owner should possess it rent free. But if a grove has been planted on a portion of sír land it ought to be assessed. But Sadr Múnsarrims Kalí Pargás and Azízúddín are of opinion that if at the time of survey the grove was found to be under cultivation it ought to be assessed, but if found otherwise it would be contrary to usage to fix rent on the grove. Extra Assistant Commisssoner Safdar Hosein, Settlement Department, Barabunkee, considers that the rule requires alteration. Sadr Múnsarrims Ahmed Ahsan and Karím Ahmed think that it does not, but the latter observes that it would not be inconsistent with justice to fix rent on a grove which has been converted into a field.

Fyzabad Division.—Mr. Carnegy, Settlement Officer, Fyzabad, remarks that in principle the rule is fair, but that it was a mistake to limit the possession to the proprietorship of the village. It would have been sufficient to provide that at the time the grove was planted, the planter thereof was in proprietary or sub-proprietary possession of the land on which the grove was planted, because, adds Mr. Carnegy, a heritable and transferable tenure in groves thus planted is generally found to exist in the following instances :—

"(1.) When the planter was in proprietary possession of the village or puttee or holding when the grove was planted.

"(2.) When the planter was in sole proprietary possession of the village or puttee when the grove was planted and subsequently lost the management thereof.

"(3.) When the planter established a grove in his sír or dihdarí land, and

"(4.) When the grove was planted within a birt or shankallap tenure which, under existing rules, is not now resumable."

Therefore the rule in the opinion of Mr. Carnegy should be modified. Major Clark, Settlement Officer, Baraich, is of opinion that the rule is a very good one, but to render it more clear he proposes that para. 5 and rule I be amalgamated by the addition of the following words at the end of the latter.

"Except the right retained by the old proprietor is shown to have been in the trees alone as distinct from the land, in which case he will be entitled to an under-proprietary right in the trees alone and to hold the same rent free unless it be proved he used to pay rent in the nawábí."

He also observes that as far as his experience goes he is of opinion that there are very few villages in which the baghs are not covered by the 10 per cent exemption rule; that out of 909½ villages he has already assessed, there are not twenty in which he assessed baghs; and that Government has a right to assess the land once a bagh, but now highly cultivated and held rent free by an under proprietor under the landlord.

Extra Assistant Commissioner Ali Hosein, Fyzabad, considers that the rule is correct and needs no modification, so as to limit the possession to the proprietorship of the vil-

lage, though it would be just to provide that at the time the grove was planted, the planter thereof was in proprietary possession.

Extra Assistant Commissioner Múnshí Sheopershad would not propose any alteration to the rule, as he considers it quite in accordance with the customs of the country. Sadr Múnsarrim Cheranjí Lál says that he knows of no fixed rule that existed during the nawábí according to which grove lands were assessed, and that in his opinion claims to groves should be treated like claims to under proprietary rights, that is, the owner may hold his grove as long as the trees stand on the land and enjoy the produce thereof only, but should the land be cultivated it would be liable to rent. Sadr Múnsarrim Hosein Ali thinks that the existing rule is unobjectionable.

Syad Hosein, Sadr Múnsarrim of Baraich, is of opinion that the rule is fair enough in principle, and that grove land which has not the appearance of a grove is reasonably liable to assessment.

Major Reid, Commissioner, Fyzabad, observes that Major R. Ouseley has apparently written under a misapprehension, and has not stated whether he supposes the land to have become bare before or after annexation. If before, the old proprietor would to all intents and purposes have been holding the land as sír; cases in which groves were cleared by their occupants under native rule are quite exceptional. The present rules, with respect to the assessment of groves, are extremely liberal, the 10 per cent allowance almost invariably covering all such lands, but where it does not, the grove land is assessed very lightly, and there is no legitimate ground for complaint. However, to make the meaning attached to the ruling more clear and to obviate any risk of diversity of practice, Major Reid would suggest the same modifications as are proposed by Mr. Carnegy.

The Settlement Officer, Seetapoor, notes that there is a wide difference between the tenures under which groves

are held in that part of Oudh and those prevailing in the Roy Bareilly division, and therefore it will be impossible to prescribe any general rules which shall equally satisfy the requirements of the whole province. In the Seetapoor district the distinction between the property in the trees and that in the land on which the trees stand is well defined and acknowledged on all hands except in the immediate neighbourhood of towns. Mr. Bradford, Settlement Officer, Hurdui, observes that rule I is good, and if the trees should ever be cut down the owners will be liable to pay revenue on the plots according to the village rates. Major Boulderson, Settlement Officer, Kheree, records that the rule works well in his district.

Of the native officers, Assistant Commissioner Raí Ajudhia Pershad is of opinion that the customs with regard to groves varies in the Seetapoor district, and he doubts if the custom, as now recorded, is at all what used to prevail in the nawábí. He alludes to lands that had been granted to certain persons some years ago by the Kings of Delhi, on which the grantees may have planted groves which do not at present exist, but in place of which the land is still held by their heirs rent free. These, he adds, should be carefully distinguished from groves planted during the last 40 years, that is to say, "the proprietors of such groves should be held to be proprietors of the land, and should be settled with as the proprietors of the rent free holdings are dealt with." They would come under class I of Circular No. 63, and their owners would get an under-proprietary tenure in them. But regarding such tenure it should be specified that it can only exist where the village has been transferred from the original proprietors without their consent and by force or fraud. Extra Assistant Commissioner Múnshí Birjlál thinks the groves spoken of in the 1st class in Circular No. 63, whether in talukdárí or mufrid villages ought equally to be rent free. Sadr Múnsarrims Pundit Somnath and Múnshí Múrtaza Beg, propose no alteration regarding this rule, but the former observes "that where a man has

freely sold his village, his tenure of any groves he may hold is that of other non-proprietary grove holders and not under-proprietary in its nature, he having sold his proprietary right. This does not apply to cases where sales or mortgages have been enforced, therefore this clause in the circular regarding class I must not be read as of general application, but only where sales or other transfers have been enforced."

Of the native officers in the Hurdui district, Extra Assistant Commissioner Hursúkh Rai would make no alteration in the existing rule, but Extra Assistant Commissioner Ikramúllah Khan suggests that a period of one or two years may be allowed to holders of groves to replant grove lands where the old trees have been removed, and in the event of their failing to do so within that time, the malguzár should be considered competent to assess the land at 5 per cent. Sadr Múnsarrim Mahomed Yáhía, is of opinion that the groves, if planted during the occupancy of the village by the holder, should be exempted from assessment, and a like exemption is advocated by Mahomed Basut Ali, Sadr Múnsarrim of Bilgram, in respect to groves coming under rule I.

The Sadr Múnsarrim in the Kheree district, Banké Beharí, states that the custom of that part of the country seems to have been that former zamindárs, who planted groves during their occupancy of the village, have held possession of both the land and the grove, and never paid rent to the occupant zamindár for the time being. Niaz Ahmed, Ishrí Singh, and Ramdás add that it is not the usage of the country to fix rent on grove-lands the trees of which have been removed, nor it is usual to assess groves planted on shankallap lands.

Mr. St. George Tucker, Commissioner, Seetapoor Division, makes no particular reference to rule I, but observes generally regarding grove tenures, "that the contract between the owner of land and the planter of trees on such land is usually an implied one; it is understood that the rent, if

any, is to be in kind, usually one-fourth of the produce or one-fourth of the wood. Rent in cash, as far as he is aware, is unknown, and it would be both impolitic and unjust to sweep away these implied contracts and to incite the owners of the land to rack-rent the owners of the trees." He further observes that when the contract is in writing its terms should rigorously be adhered to, but when there is no contract in writing and trees fall down, it becomes a difficult point to ascertain whether the owner of the trees has any right to plant other trees in their place, as he believes that the custom in some parts of the province is to allow the owner that power, in other parts not. In making these remarks Mr. Tucker quotes the interesting records of district meetings of talukdárs in 1861-62, at which the customs regarding rights in groves in the Roy Bareilly division were well discussed. These proceedings are on record in the office of the Secretary to the Chief Commissioner. The owner-ship of trees and the cultivation of cereals, says the Commissioner, are quite distinct; they have no connection with each other.

Roy Barelly Division.—Mr. King writes as follows:—

"The first case put by the Settlement Officer of Roy Bareilly was, I should think, a very rare one; but supposing a man has a comparatively large piece of land, which for any reason he holds rent free, whether because it was granted as a grove or as sír free of rent (may be, under a compromise) or pure máfi, or for any other reason, the same practical difficulty arises *viz.*, how with so much rent free land can the malguzár carry on?

"I reply that he can resign the right to engage for the Government revenue of that rent free land, and then Government will do as it thinks proper with the actual occupant.

"If such resignation involves a breach of contract the Government may see fit through a civil court to compel specific performance or give damages, but it will probably not compel a malguzár to undertake a burthen which must overwhelm him."

"But by not taking the initiative in the matter the court will be no party to any loss which the resignation of the engagement to pay revenue may inflict on the owner of the rent free land

"In the first case then my reply would be. If the court thinks the land should be held rent free let it leave it so and not trouble itself to find a remedy; the málguzár can find one." Mr. Forbes, Settlement Officer, Pertabgurh, does not think that the rule presents any practical difficulty. He is of opinion that in cases of the nature quoted by the Settlement Officer, Roy Bareilly, the zamindár having an under proprietary right in the land has no right of property in the trees of the grove distinct from the right of property in the land occupied by such grove, hence clearing the land of the trees involves no alteration in the tenure. He would neither advocate any alteration to the present rule nor let our courts be hampered by one stereotyped rule, but let each case as it arises be fairly determined on its merits. With this opinion, his assistant, Mr. McMinn, agrees, vide para. 10 of his report. Major Perkins is of opinion that the existing rules are capable of general application and require no other modification than what the settlement officer can himself make when he finds it wanted. He however observes that no mention of rent should have been made in the circular, for to demand rent is opposed to the custom of the country.

Of the native officers in the Pertabgurh district, Sadr Múnsarims Mahomed Akber, and Oojagur Lall, offer no remarks regarding Rule I, but Sadr Múnsarims Mahomed Ismail, and Mahomed Abdullah, observe that the existing rules are perfectly consistent with the usage and customs of the country, and the circular needs no modification.

Extra Assistant Commissioner Pundit Madho Pershad, and Sadr Múnsarim Múnshí Saiud Uddín, of the Sultanpoor settlement, concur in the view, but Sadr Múnsarim Alí Hossein, observes that, if planters be required to pay

rent, the groves will deteriorate; and it has not generally been the custom to assess groves. Sádr Munsarrims Khizir Mahomed Khan, and Dhunput Rai, of the Roy Bareilly settlement, are of opinion that a grove planted by the holder during his occupancy should continue to be held by him, for a zamindár is entitled to a grove, planted by permission, only when the planter dies heirless.

8. In respect to Rule II, Major Ouseley made no observations, but on Rule III, he observes:—

Rule II. A person may have given a sum of money to the proprietor of a village for a piece of land on which to plant a grove. In such cases the occupant of the grove will be maintained in possession of whatever rights he may have purchased, and it will be the duty of the Settlement Officer to ascertain and record what the nature of such rights may be, more especially with regard to the disposal of the land in the event of the grove being removed.

Rule III. The proprietor of a village may have voluntarily made over to some person other than a mere cultivator, a piece of land on which to plant a grove, and the grantee may have exercised a full proprietary right over the trees, and hitherto been exempt from the payment of rent. Here the occupation of the land is by favour only, and the owner of the trees cannot claim to be maintained in possession without paying rent, should such rent be demanded of him. His right of property in the trees will be maintained according to the local custom, whatever that may be found to be.

"By this rule no option is given; decree holders must pay rent for their bágh, though for some reason it is laid down that the amount of such rent is not to be determined by the settlement courts. This compulsory payment of rent is no doubt a hardship in some cases, the trees of the bágh may be still standing, the land occupied by them has been held rent free for generations and is now unassessed by us unless the aggregate area of bághs exceeds 10 per cent of the total area of the village, in which case it has been probably very lightly assessed"

9. *Lucknow Division.*—Mr. Capper writes:—"In cases under Rule III the owner of a grove has a right of property in the trees but none in the land, he is therefore liable to the málguzár's demand for rent, and has no concern with the revenue assessed.

"Or in other words. The one owns the land, trees and all, and pays revenue if assessed.

"The other owns only the trees and pays rent for the land if demanded. Either may do with his own property, whatever is sanctioned by law or local custom, but the value of the property is very different."

Major Chamier agrees with the above remarks.

Mr. Harington states that, in his opinion the circular does not profess to be exhaustive, and merely gives a certain classification of certain kinds of cases. He has therefore never felt bound by it when different facts had been elicited by the actual enquiry in any specific case.

Mr. Butts observes:

"It is a question of fact whether the owner holds only of favour or not. It does not seem to follow that because he was only granted of favour he may not have held of right, as in the case of shanklups where the landlord has divested himself of all proprietary right in favour of the grantee. In other cases it would seem that the owner of the trees had no right in the land, he could cut down the trees but could not replant without the landlord's permission, and there would seem to be no control over the demand of the latter for rent.

"Though," he adds, "I think that if any alteration of the rules were necessary, it might be that the holder should be entitled to a right of occupancy, so long as he devoted the land to the purpose for which it was originally set apart, and subject to the usual local customs regarding the sanction of the landlord in the replanting of the grove if it were cut down.

"This would protect Government, which has an interest in the cultivation of trees and has granted 10 per cent of the area of the village free of assessment for the purpose."

In respect to the cases noticed by Major Ouseley, in the 15th and 16th paras. of his report under reference, Mr. H. S. Reid writes :—

"In the 3rd class of cases the difficulty is the regulation of the rent. The rent should be a certain portion of the produce of the land, that is of the fruit, or if the grove is used as a grazing ground, a portion of the grazing dues. Should the trees be cut down and the land cultivated, the occupant should pay the ordinary cultivating rent. The settlement officer, Roy Bareilly, argues that, because the rights in groves coming under the 3rd class have always been freely transferred by the parties in possession, there is no real difference in the nature of the tenures of the 1st and 3rd classes. There is, however, a real and a very material difference. The owner of the grove in class 1, is owner of the land. He may cut down his trees, cultivate, &c., and yet he cannot be called upon to pay rent for the land. On the other hand the owner of the grove in class 3 is not owner of the soil. He may have been authorized by the general custom of the country to transfer his own rights, but he could not transfer the right in the land. His successor or representative, whether by descent, gift or purchase, could have no ownership in the land, at any rate after the grove had disappeared and the land were brought under cultivation. In the Nuwábí, the cultivated land would soon have appeared in the nikassí and rent would, I imagine, have been taken by the party who held the village kabúliat, were he talúkdár, zamindár, or farmer."

Sadr Múnsarim Kalípergas is of opinion that Rule III admits of modification to a certain extent, and observes that where groves have been planted on plots of land granted by landlord, the planter can claim no right in the land without paying rent if demanded, though he may enjoy his right to the trees according to the established usage and custom of the country. Sadr Múnsarim Ikramúllah Khan thinks that no rent should be fixed on grove lands held by chukdárs when such lands are not under cultivation. He would not propose to assess such grove lands as come under Rule III and the owners of which pay a certain portion of the sale proceeds of the trees thereof

to the proprietor of the village, but grove lands held by persons not competent to alienate them should, in his opinion, be lightly assessed.

Extra Assistant Commissioner Sheo Sahai, is of opinion that to fix rent on groves, the planters of which have no title to land, is contrary to the law of the country, and suggests that, in the event of a grove having been cut down, the owner of the land must cause it to be re-planted. In respect to Rule III the sadr múnsarim would assess all such groves as were planted by cultivators on a portion of their cultivated land, and which have been re-cultivated after the trees had been removed.

Sadr Múnsarim Azíz-úd-din would not modify Rule II, but in respect to Rule III he considers it contrary to the customs of the country to fix rent on a grove which was planted on a piece of land given by a village proprietor to a cultivator or any other person, whose possession of land is a mere matter of favour, though his right to the trees is unquestionable.

Extra Assistant Commissioner Sufdur Húsein of the Barabunkee Settlement, would allow Rule II to stand as it is.

Sadr Múnsarim Kurrím Ahmed states that, according to existing usage the proprietor of grove lands gets a portion of the sale proceeds of the trees when cut down and sold. He thinks that the holders of grove lands refusing to re-plant the same after the trees are removed should be ousted.

Sadr Múnsarim Mahomed Ahsan of tahsíl Ramnaggar, thinks that to fix rent on groves is contrary to usage. In respect to grove lands which were found to be under cultivation at the time of settlement and have been included in the assessed cultivated area, he is of opinion that rent may be fixed on them, and in like manner he would assess grove lands when trees have been cut down and the

land brought under cultivation. But he would assess lightly all newly planted groves should the grove lands exceed the 10 per cent exempted area.

10. *Fyzabad Division.*—Mr. Carnegy, the Settlement Officer of Fyzabad, remarks that Rule II is an eminently just one, but to give effect to it "two things should be always kept in view viz., was the price paid (1) a mere nuzerana, or (2) a veritable and valuable consideration ?" He then adds that, "under the first of these contingencies, a right of property in the trees only is usually conveyed, and in the other, the rights extend to the land also. But this distinction of prices will be difficult of ascertainment unless a deed is forthcoming, and under such circumstances the court can only fall back on the custom of the neighbourhood."

Mr. Carnegy remarks regarding Rule III "under Rule III the case is contemplated of a proprietor having voluntarily made over some land to a non-cultivator who has hitherto enjoyed proprietary rights free of rent, and it is provided that in such cases the right will be maintained, local custom being followed.

"An additional provision appears to be required under this rule, that is, if the grove has been planted for the public benefit (as is so often the case), and the planter has thus not been in the enjoyment of the fruit of the grove which, with the concurrence of the owners of both land and trees has been partaken of by the public, it will not be open to either party to destroy the trees, and the land will lapse to the owner of the village when the trees disappear.

"Such a provision will protect the interests of the public, while the original intentions of the planters and the landowner will have been alike fulfilled."

Major Clark makes no special remarks as to groves planted on purchased land, but referring to Rule III states

that, it has always appeared to him very severe, and writes as follows:—

"As the rule now stands it contemplates a fair and mutual contract between the landlord and the planter of a grove. The former says, 'I will give you land if you will plant a grove on it.' The question then to decide is, does this contract imply that a rent would be, or could be demanded by the landlord whenever he chose to do so, and does it imply a consent on the part of the planter of the grove to pay a rent when demanded?

"What this contract implied, can only be ascertained by finding out, what the custom was during the Nuwábí regarding such transactions. Now custom, as Mr. Currie in his grove circular justly remarks, will be found to vary in every elaka. In some elakas the custom could be easily ascertained, in others it could not; while as regards many of the varied rights in a grove, my experience has taught me that in the majority of the talúkas that I have had any thing to do with the custom is only being fashioned now, and that because of the settlement operations.

"I would therefore like to see Rule III altered after the words 'hitherto exempt from the payment of rent.' I would have the rule thus. Here though the occupation of the land of the grove is by farm only, yet the owner of the trees can claim to be maintained in possession without paying rent, as long as the grove remains a grove. But should the owner of the trees cultivate any portion of the land included in the grove he will be liable to pay rent, if demanded of him by the landlord. His right of property in the trees will be maintained according to local custom, whatever that may be found to be. In adopting this alteration I consider that not only will Rule III be fairer to the owner of the grove, but I believe it would be more in consonance with the real feelings of both the landlord and the people generally. Landlords or lessees, as a general rule, never demanded rent on any grove, and I have

a firm belief that in badly managed elakas, or such as belong to landlords who leave the real control of their estates to their karindahs, and in estates the owners of which are grasping, it is because Rule III gives such men the right to demand rent on groves that rent is now demanded. These very men, while they demand the rent, know that they are acting contrary to what the natives themselves think is right, but having the law on their side they care not. I would like to see this power taken away from them in cases under Rule III. If this rule is altered there must be a clause defining when the land of the grove can be taken up by the landlord. Some of the trees of the grove may fall down or be displaced in some way, thus leaving a portion of the land free, and these trees displaced may be scattered ones and not altogether in a mass, and unless under such circumstances the power of the landlord to resume and occupy the land thus set free, is not defined, there will be scope for litigation and oppression hereafter.

"With reference to 16th para. of Settlement Officer Roy Bareilly's report I would not decree to the class of such owners of groves as are mentioned in Rule III, an under-proprietary right, for they are not entitled to such a status. If the rule be altered in the way that I have suggested or in some other similar manner the effect will be, 1st; to retain the owner in possession of his grove; 2nd to permit him to hold it rent free as long as the grove exists; 3rd; the right in the trees will be defined by custom. If the rule is so far modified as to secure all this to the owner of a grove under Rule IV, it will give him a position which he is fairly entitled to without wronging the landlord in any way."

Extra Assistant Commissioner Ali Hoosein of the Fyzabad settlement, in referring to groves planted on purchased land observes that Rule II, though it indirectly suggests that the settlement officer should proceed to investigate claims to rights in such groves, yet it does not define the principle upon which he has to determine the

points involved in the issue. He therefore considers that it ought to be ascertained whether land was acquired by purchase on a deed of sale or by payment of nuzuranah money to obtain possession. He then observes that if the land is acquired by purchase the proprietary right should be considered as absolutely belonging to the transferee independently of the existence of the grove, but if by payment of nuzuranah the possession will be conditional, that is, subject to maintaining the grove, and the proprietor of the grove shall have no right to remove the trees and retain the land in any other way than that stipulated for; and when he maintains no grove his right to the trees ceases.

Referring to Rule III, the Extra Assistant Commissioner writes that when lands are given by the proprietor of a village to a non-cultivator, who has hitherto enjoyed proprietary right of the grove irrespective of his paying rent, the owners of such groves have no right of property in the land. Their position in respect to land is analogous to that of mu'afídárs to whom land has been granted by zamindárs.

In respect to groves planted on purchased land, Extra Assistant Commissioner Múnshí Sheopersad is of opinion that persons who purchase land from the proprietor and plant groves thereon should be regarded as owners of the land and competent to alienate it.

With regard to Rule III he writes that when the planter of a grove holds the land by virtue of gift from the proprietor, and if he has sunk a well on the same and built an enclosure, the land should not be resumed.

Sadr Múnsarim Cheranjí Lál remarks that so long as the trees exist the holder of the grove should be allowed to retain possession, but when the trees are cut down the land should be taken up by the occupant of the village. In respect to Rule II he says nothing.

Syad Hosein, Sadr Múnsarim of Baraich, thinks that where the grove land is not covered by the 10 per cent

exemption rule, there the Government is at liberty to assess it lightly.

In respect to groves planted on purchased land the Commissioner, Colonel J. Reid, concurs in Mr. Carnegy's opinion that if there is a deed, its terms should be upheld, if not, the decision should be in accordance with local usage; but unless the usage has been affirmed in previous decisions, evidence as to its existence should always be recorded, both parties being allowed to name witnesses; and if the enquiry is not made by the Settlement Officer the file should be submitted to him for orders before the case is decided. In regard to Rule III, he records that Circular No. 63 of 1863 does not profess to provide authoritatively for all cases, and in disposing of these regard must be had to any well defined local custom which may be found to exist. Circular No. 23 of 1868 will be a great check on landlords, for if rent is demanded the grantee will generally cut the trees and the land will become liable to assessment under this circular. This remark, says, Colonel Reid, "does not apply to special cases, such as vicinity to towns: the fruit of the trees is always saleable."

Seetapoor Division.—Mr. Bradford considers that Rule II is a good one, but that Rule III is not so, is rather harsh, and contrary to village custom. He gives his reasons in his remarks under Rule IV.

Assistant Commissioner Rai Ajudhia Persad records that Hindoos, especially Rajpoots and Chuttrees, think it a pious deed to plant groves, and the sale of the fruit of such is a disgrace to them.

In groves planted upwards of 60 or 70 years ago the persons who planted the groves held equal property in the land with their title to the trees, no distinction was known, and they possessed the right of planting fresh trees in lieu of those cut or which were blown down, &c., and such groves were mortgaged and sub-mortgaged and sold and re-sold without any interference on the part of the zamindárs.

He considers that the terms of Clause III of the circular are harsh as regards the planter of the groves, and entirely opposed to all custom, that is to say, the proprietor should not be allowed to take rent for grove land. Such was never the custom, the land used to be given free of any such condition or implied understanding, with a view to beautify the village and to redound to the donor's credit; neither the donor nor donee ever contemplated the taking or paying of rent. Had rent been ever taken we should not have found the groves we now see on all sides.

Extra Assistant Commissioner Múnshí Birj Lál remarks in respect to Rules II and III:—

"Clause II. If a zamindár has sold land for the purpose of grove planting he can have no further interest in such plot, and it ought to be held by the purchaser as a separate chuk, only the revenue demand being levied from him.

"Clause III. It is against the intention of Government and contrary to the spirit of Circular No. 23 of 1868, and entirely opposed to local custom, that rent should be demanded for a grove. The custom is that the planter can sell, cut, or mortgage his trees without interference from the proprietor of the land on paying either one-fourth of the price realized or one-fourth of the wood cut or sold to the proprietor: no rent was ever paid.

"It is true that in special cases where a proprietor has been sorely pushed for means to pay his jama he has sometimes sold or cut down all the groves on his estate, no matter where they were.

"I distrust the statement made by some of the ryots in talukdári estates that they have only a right in the wood and fruit, and all at the pleasure of the talukdárs, and am persuaded that such is not really a voluntary statement of a custom known to exist, but an admission made out of fear of the talukdárs, as some make these statements and others hold out against such admission. Any well defined custom cannot be deduced from such admissions. I come to two conclusions.

"1st. The property in the land is quite distinct from that in the trees.

"2nd. The holder of the grove cannot plant fresh trees without the consent of the proprietor of the land. If rent is allowed to be taken for groves their culture will not be extended."

Sadr Múnsarim Pundit Somnáth, makes no remark on Rule II, but in respect to Rule III observes that he knows of no custom by which a proprietor of the village is justified in demanding rent from holders of groves who are not possessed of any right of property in the land, nor has anybody ever heard of a person being turned out of his grove for notpaying rent: why then bring in any such rule now?

If groves be ever assessed by proprietors the assessment should be so trifling as not to give their holder cause for complaint and affect the recent orders (Circular No. 91 of 1868) for the extension of grove plantation in the province.

Sadr Múnsarims Múrtaza Beg and Nasir Beg, are not aware of any custom which sanctions assessment of groves planted with the consent of the proprietor of the land without any idea of his fixing rent in the grove land.

Extra Assistant Commissioner Harsúkh Rai, of the Hurdui Settlement, thinks that Rule II does not require alteration, but in respect to Rule III is of opinion that holders of the groves mentioned therein do possess an inheritable title.

Niaz Ahmad, Sadr Múnsarim of Kheree, and Isrí Sing of Lukhimpoor, state that in their opinion the holder of the grove is a proprietor of the trees only and the right of property in the land belongs to the landlord, but when groves are planted by a zamindár, the power of alienating the right in the trees and of that in the land lie in him, but when groves are planted by a cultivator the power of alienating the right of property in the trees only can be possessed by him.

Sadr Múnsarims Bánke Bihárí and Rámdass would not assess groves held by a cultivator so long as the trees are not removed and the area does not exceed the 10 per cent allowance.

They are of opinion that old zamindárs can alienate their groves with the land, but others cannot. In short, a cultivator who has planted a grove on a plot of land granted by a zamindár can bring no claim to possession without paying rent if demanded.

Extra Assistant Commissioner Ikrámullah Khán would not suggest any alteration to Rule II. As to Rule III he observes that the holder of a grove land mentioned in this rule possesses right of property in the trees. This right he is competent to alienate, and he has also the power of replanting the fallen trees without the permission of the proprietor of the land.

Sadr Múnsarim Mahomed Yahia, proposes no alteration to either of the rules, while Sadr Múnsarim Mahomed Básit suggests that a time for replanting fallen trees be prescribed and in case of failure the grove land should be assessed. He further observes that he would exempt from assessment every grove that has the appearance of a grove, but when the trees are removed he would consider the zamindár as the owner of the land.

12. *Roy Bareilly Division.*—Mr. King writes as follows:—

"The second case, Rule No. III, is one in which a grantee has exercised full proprietary right over the trees.

"The tenure is said to be by favour. I hold this to be wholly bad law; any grant followed by possession as in this case is valid, and the law will presume a sufficient consideration to have been given. Thus then the rent free tenure of the trees should be, I think, maintained according to local custom; at any rate the court should be no party to breaking

the title, and if the tenure was crippling the málguzár, he could probably make his own terms by surrendering some part of the land on which the grove stood to the holder of the grove, but I believe, in practice, such a case as this seldom occurs.

"My answer therefore in the second case is much the same as in the first:—maintain the rent free tenure and leave the málguzár to his own remedy.

"The circular is wrong because bad in law, and the imposition of rent should not be allowed.

"Referring to para. 16 of Settlement Officer's report, it will be gathered from what I have said above, that I agree with him so far as I advocate no difference of treatment of the two rights, but I hold that there is a clear difference in the rights themselves, and indeed the Settlement Officer himself has pointed it out. Referring to his proposed form of decree I would substitute the word 'according to the custom of the tenure' for, 'so long as it remains uncultivated,' otherwise he must pay rent for it, as an under-proprietor. The custom may be and probably is, as far as my experience goes, that he has no right to hold the land at all, save as standing room for trees, and if the trees are gone, his right is gone. Anyhow it seems giving him more than he deserves to give him (and I presume, his successors) a title to hold on under-proprietary terms. I therefore object to the Settlement Officer's proposed form of decree."

Mr. Forbes, Settlement Officer Pertabgurh, considers Rule III rather absolute, and is of opinion that the question of the owner's right to exemption from payment of rent, &c., should be determined by local custom.

Of the distinction between the tenures set forth in Rules I and III referred to in the 16th para. of Major Ouseley's letter, Mr. Forbes writes that, "there is a very essential difference in the two tenures and also in the rights transferred.

"Under the one tenure the owner of the grove possesses a right of property alike in the soil and in the trees, whereas under the other the said right is confined to the trees only.

"Transfers of groves," observes Mr. Forbes, "are very common, but not transfers therewith of any rights in the soil."

The assumption that the transfer of a grove necessarily involves the transfer of the land on which it stands, has in the opinion of Mr. Forbes misled Major Ouseley, and he dissents entirely from that officer's proposal as contained in the 17th para. of his report.

Mr. McMinn, Assistant Settlement Officer remarks :—

"It is apparent that if valuable consideration was paid for the grove grant, as was at least often if not generally the case, a presumption of its transferable nature arises. A man should be able to sell what he bought. I may just remark that in my opinion the circular draws an altogether unnatural distinction between *old* proprietors' groves and grantees' groves.

"I know practically the talukdár's or grantee's title was of *much more* validity than the old zamindár's and naturally so. The talukdár got the village by conquest, or by paying up balances, or by purchase, and in either case he would doubtless consider himself as having earned and being entitled to the whole proprietary right in the village.

"His ethical code would not stigmatise the utter eviction of the old zamindárs, men of an originally adverse interest; but few men indeed would have so outraged public feeling as to resume grove grants sold to their bankers or granted to shunkulupdárs without some plausible ground, or unless the grant had become absolute. I think it is a great mistake to say that because the talukdár voluntarily granted a grove perhaps for a round sum of money, therefore the rent free tenure was as of favour and need not be respected by us. The natural converse is that grants made

involuntarily, over a slow fire, for instance, should be enforced. The same policy or *omission* is followed in Act XXVI of 1866, under which a transferable sub-tenure can be granted to a proprietor who held, prior to the annexation, the taluká, but relatives of the talukdár and purchasers who have *quoad* the talukdár a much stronger claim, are denied a hearing. I think the former class get too much often. Of course some measure may be in contemplation, but its uncertainty seriously cripples settlement officers, who are often the arbitrators and advisers of the parties and who will have little influence if they cannot authoritatively announce what is the law and the whole law."

Sadr Múnsarim Syad Mahomed Akbar is of opinion that owners of groves who have failed to establish their right to land acquired by sale or by a gift, may be allowed to retain the right of enjoying the fruits of the trees so long as they reside in the village.

Sadr Múnsarim Mahomed Ismáil considers the circular to be perfectly consistent with the prevailing usage and customs of Tahsíl Behár.

Sadr Múnsarim Mahomed Abdullah would make no alteration in the circular, but is of opinion that, if a grove was planted by permission of the village proprietor the holder may be allowed to continue in possession so long as he pays a part of the produce, if he has been used to pay it; and if no rightful owner be forthcoming, the village proprietor is competent to give it to another person for a certain period.

Újágar Lál believes that it is quite against the usage of the land to fix rent on groves.

Extra Assistant Commissioner Pandit Mádho Parshád of Sultanpoor thinks that Rule II is in conformity with the existing usage, but in respect to Rule III he observe that the custom, which amounts to *lex loci*, of renting any kind of grove does not exist in Oudh, and the holders of groves

ought to be maintained in possession so long as the trees exist, the land of the grove being the property of the village proprietor.

Sadr Múnsarim Syud-ud-dín would make no alteration to Rule II.

Sadr Múnsarim Hosein Ali agrees in opinion with Extra Assistant Commissioner Pundit Madho Pershad.

Sadr Múnsarim Khizr Mahomed thinks that a zamindár who shares in the produce of a grove may be allowed to fix rent when the grove produces nothing and when the owner thereof fails to give him his share, though such an assessment be contrary to custom. He is also of opinion that when trees are cut down and the owner fails to replant the grove land, the landlord will be competent to fix a regular rent.

13. In quoting this rule the Settlement Officer Roy Bareilly writes (in the 18th para. of his report) as follows. "The wording of this rule is so loose that the meaning is necessarily vague. It lays down that the possession of the trees follows the possession of the land. Does this mean the land of the bágh or the land in possession of cultivator? It cannot be the former, as at the time that circular was penned cultivators were not supposed to have any right in land at all and therefore could be dispossessed of their bághs at any moment. But it is probable that the latter interpretation has been generally adopted in other districts as well as in this one. In this case the proprietor has only to raise the rent on the cultivation, thereby driving out the tenant, to deprive him of the bágh."

Rule IV. The grove may have been planted by a common cultivator by permission of the proprietor, and such cultivator may or may not have paid rent for the land. In such cases the occupancy of the trees must follow the occupancy of the land, and if the cultivator is turned out of the latter he will lose all interest in the former.

14. *Lucknow Division*—Referring to the above observations Mr. Capper records thus:—

"As I took part in drafting the circular I may say that the intention of Rule IV was that when the cultivator ceases to occupy land in the village he loses all interest in the trees which he has been allowed to plant, provided that he has acquired no special right by gift or contract. It is perfectly possible that by raising rents the landlord may drive a cultivator from his holding: but as he is proprietor, and the cultivator a tenant-at-will, I fail to see the peculiar hardship. It is the interest of the landlord to retain his cultivating tenants-at-will, and rackrenting would ruin him.

I do not myself see that any change is required. The 5th section of the circular leaves a wide option to Settlement Officers."

Major Chamier agrees with the above remarks. Mr. Harington adds that the circular shackles enquiry, in so far as courts limit their investigations by it, and as it was issued at the earliest stages of the settlement it might now be abandoned. Mr. Butts writes "that there is no control over the landlord in his demand for rent; that he has always understood that a cultivator has a proprietary right in the trees, though it may be of a more limited nature than the rights mentioned in the two preceding paras., as that the landlord shall have one-fourth of the price of the sale of the trees on such sale by the owners or a certain proportion of the yearly produce of fruits. It is often very difficult to know by what action the cultivator has forfeited his right to the trees. The grove would lapse to the landlord on his death without their or his voluntary relinquishment, but Mr. Butts does not think that the landlord could arbitrarily dispossess the owner, and that if he did exercise his right to demand rent, that the cultivator could appropriate the trees, or that he might do so previous to leaving the village for another if he chose, always surrendering to the landlord his share of the sale &c. He has seen numerous claims in which a former owner of a grove, only a cultivator, claimed his right, and that he has only been dispossessed within limitation, and as far as he

can remember they have shown enough right to entitle them to decree, as in the latter case they would seem to have a right by occupancy so long as they have not violated any of the conditions or customs under which the grant was originally made, that is, for one, that they had not deserted the village, and so long as it is conceded with a strict regard to the custom prevailing in such a right, it may be unnecessary to decree that so much should be given, but I do not think that any landlord would object.

"It seems to me that the interest of a cultivator in land that has been planted with a natural produce that may last for 100 or 150 years, and that he may have inherited from his father and may hand down to his son, is different from his interest in land that he plants with an annually changing series of crops."

Mr. H. S. Reid writes :—

"The fourth class of cases is the most difficult to deal with. It is truly observed by the Settlement Officer, Roy Bareilly, that the proprietor has only to raise the rent on the cultivation, thereby driving out the tenant, to deprive him of the bágh.

"It is not to be supposed that the permission to levy rent on groves coming under Class III was intended to be withheld from Class IV. Often cultivators owning bághs are able to pay the high rents they do for their cultivation only by reason of the profits accruing from the fruit, grazing, &c., of bághs which they have long held.

"The result (as the Settlement Officer notes) is that if the proprietor demands rent for these bághs he drives the cultivator from his holding and consequently forces him to relinquish his bághs."

Mr. Capper fails to see any hardship in this state of things. The intention of Rule IV, writes Mr. Capper, was "that when the cultivator ceased to occupy land in the

village he loses all interest in the trees which he has been allowed to plant, provided that he has acquired no special right by gift or contract. I cannot assent to Mr. Capper's principle or argument. I believe that Mr. Butts is much nearer the mark when he says, 'It seems to me that the interest of a cultivator in land that has been planted with a natural product that may last for 100 or 150 years and that he may have inherited from his father and may hand down to his son is different from his interest in land that he plants with an annually changing series of crops.'

"There are in Oudh many Naboths who need protection from a greedy Ahab, and the Government should extend to them that protection. It not only seems, but is, monstrous that a landlord by demanding an exorbitant rent from a tenant may deprive that tenant of valuable property which he and his ancestors have made and held it may be for more than a century. A cultivator who owns a bágh in the village in which he cultivates should be treated as a tenant with right of occupancy, that is, his landlord should not be allowed to deprive him of his bágh, so long as he is paying or is willing to pay the rent he has hitherto paid on a fair and equitable rent, if the old rent were under that mark."

Sadr Múnsarim Kalí Pergas is inclined to believe that Rule IV ought to be modified so far as it relates to the dispossession of groves, on the holder being ejected from the land cultivated by him.

Sudr Múnsarim Ikram Ulla adds that the usage seems to be that when a cultivator possessing a grove gives up his land of cultivation with it, he loses his possession of the groves.

Extra Assistant Commissioner Sheo Sahai thinks that groves planted on lands granted by the proprietors of villages must not be assessed, and that the holder may have the power of alienating it.

Sadr Múnsarim Azíz-úd-dín writes that if a cultivator possessing a grove be ousted from his land of cultivation he must not be dispossessed of his grove unless he deserts the village. He further thinks that holders of groves planted by virtue of royal furmán or other similar authority independent of the landlord, must be maintained in full right. He is of opinion that the usage with regard to groves in towns must be followed.

Sadr Múnsarim Kurím Ahmed writes that it is contrary to existing usage to dispossess the holder of a grove on his being ejected from his land of cultivation unless the grove was planted by him on part of the land engaged by him and for which he may have paid a rent inclusively.

He believes that it has been the usage of this country to alienate groves but to the residents of the same village, and that the permission of the zamindár was not necessary.

Extra Assistant Commissioner Sufdar Hosein puts the following interpretation on Rule IV :—

That where a grove was planted on a piece of land separate from the land of cultivation, the holder of the grove, though ejected from such land, may be allowed to retain possession of his trees, subject, however, to the payment of a reasonable rent and to his continued residence in the same village.

With reference to para. 5 of Circular No. 53, he observes as follows:—

(1). Planters of groves who once occupied the village should be maintained in possession of their groves as sirdárs.

(2). The holder of a grove is competent to alienate the trees and not the land, and in the event of a claim to rent being brought forward, the principle laid down in Rule III should be followed, but when the trees are cut down the land should be assessed at usual rates.

(3). The alienees of groves ought to be maintained in possession subject to regular assessment.

(4). The holders of groves in large towns ought to be continued in possession of the land and of the trees, and the principle laid down in Rule III, should be followed in fixing rent.

(5). Holders of groves who may have lost their proprietary title to the village owing to the law of limitation and who are of the same family as the present occupant, might with justice be exempted from assessment.

15. *Fyzabad Division.*—Mr. Carnegy's remarks in respect to Rule IV, run as follows:—

"This rule is contrary to usage. The local custom here is (1) if a man ceases to cultivate, but continues to reside in the village, he retains possession of his grove, and (2) it was not unknown for former cultivators to transfer their rights in trees, and the right of the landlord to a fourth or a half of the purchase money has in some instances been recorded on admission of the parties in the settlement proceedings.

"It is thus obviously unjust to disconnect cultivators by rule from their rights in groves which by custom they have long enjoyed; at the same time it must be admitted that the right of transfer was exceptionally enjoyed, and it would therefore be inexpedient to confer a general right of grove transfer to be exercised by all without exception.

"Provision should therefore, I conceive, be made that a heritable right of possession will be allowed in such cases, subject however to the condition that if the cultivator leaves the village he forfeits his rights in the trees.

"It must however be understood that if the trees were not planted by, but were merely made over to, a cultivator, in order that he might for the time enjoy the fruit, it is

within the power of the proprietor to resume them at his pleasure, unless the cultivator can show cause to the contrary.

"But it will be found that other rights exist in groves besides those maintained in the Settlement Commissioner's 3rd para. and of which I have written above.

"To these I will now allude, proposing such rules as I think necessary for the disposal of claims when they arise.

"(*a*). Co-sharers have been known to plant groves in the common land. Some of these consider themselves to be the owners of the trees only, while others make the trees the ground work for claiming a right of property in the land also. In such cases there can be no question as to the ownership of the trees; as to the land, if the right to that cannot be mutually adjusted, it must be disposed of in accordance with the law of limitation.

"(*b*). Proprietors were in the habit of giving patches of land in mu'afí, murwut, or jaghír tenure, and instances are known of groves having been planted without permission to a greater or less extent on such lands, by the holders. In such cases the right to the grove land will be governed by the rules that for the time being, apply to the entire grant. If it be a mu'afí grant it will follow the mu'afí rules; if a murwut, the murwut rules, and so on.

"If a right is established to the grove land, this will cover the right to the trees also. If, however, the contrary be established, the holder may be ousted; but treating trees as standing crops* he should in my view be allowed compensation for them by the landlord."

* Section 46 Rent Act.

Having as above recorded his views on the tenure of groves, Mr. Carnegy proceeds to treat the subject of assessment of groves generally as follows :—

"In regard to the word rent, I accept the definition of the Oudh Rent Act. In the majority of cases landowners

receive no rent from groves. Where rent is taken it is in any one of the following ways :—

" (1). A portion of the fruit, half being the maximum quantity.

" (2). A cash quit rent, and (3) the full rent of cultivated land.

" The last of these modes of assessment is however confined to the neighbourhood of towns, where fruit can be sold at remunerative rates.

" It has been asserted that cultivators' groves are nominally rent free, but that virtually their cultivation has to bear the difference.

" I admit that this was formerly frequently the case, but at this distance of time it is uterly impossible to say how much of the old rent belonged to the ryot's cultivation and how much to his grove. If therefore there is nothing to show that a definite portion of the rent is on account of the grove the latter should in my opinion be held to be rent free.

" The Officiating Settlement Officer of Roy Bareilly lays stress on the fact of groves having been assessed or not assessed to the Government revenue, but it does not appear to me that this fact has anything whatever to do with the matter before us.

" The exceptions to the general rule are rare, that Government takes a certain portion of the net produce of the land, but nevertheless the landlord has not on this account been released from the responsibility, with reference to those holding rights under him which custom and usage have long required of him. If, for instance, land has long been held rent free or at less than revenue rates by former proprietors no power has been conferred on the present málguzár to assess or to enhance such rents merely because such land is now fully assessed to the Government revenue. It follows as a natural consequence that the same rule must

be adopted in regard to groves, provided, however, that it is not found necessary to set aside such arrangements for the security of the State demand.

"Another point to be remembered is that the encouragement of arboriculture is a prominent part of the present policy of Government; but if we now proceed to stimulate the levying of rent upon groves contrary to long established usage, we thwart the object the Government had in view in releasing a portion of the area of each village from assessment for the furtherance of tree planting, by actually offering a premium for the destruction of groves.

Having these considerations in view, I suggest the following rules for the adjustment of rents of groves.

(a.) "In groves of every description, whatever has hitherto been paid, whether it may have been in cash or in kind, the same will be paid now, subject however to enhancement on good cause being shown.

(b.) "All groves that have hitherto remained rent free will still remain so, with the exception of groves in jagírs. In this latter class, if the jagír was held within limitation in lieu of service, and the service has since ceased to be required, a fair rent will be claimable.

(c.) "If a grove has disappeared and the right of the holder in the land remains, a fair rent will under all circumstances be claimable, provided, however, that the grove holder was not the proprietor or sub-proprietor when the grove was planted, and provided also that the grove holder was not in rent free possession of the particular land at the time when the grove was planted, under either of which exceptional cases the land, even if cultivated, will still remain rent free."

Major Clark in respect to Rule IV records as follows:—

"In his 18th para. the Settlement Officer of Roy Bareilly refers to Rule IV. I have always read the rule regarding the

occupancy of the land as the Settlement Officer himself states it is read in Roy Bareilly, viz., that if the cultivator loses the land he cultivates he also loses his bágh.

"As regards this rule generally, I think two distinct classes of bághs have been mixed up. The first class are those that have been planted by a cultivator on land expressly made over to him for the purpose of planting a grove. The second class are already planted groves which are given to the cultivator as an adjunct to his cultivation.

"The first class have been planted by the well-to-do cultivators, who have been prompted to plant either by religious feeling or a desire to have a bágh called after themselves. The planters of such bághs may be of any caste. No rent is taken on such a bágh up to about twelve years; the land of the grove is cultivated, as the shade of the trees is not injurious to a crop grown under them till that period. The planter of the grove reaps all the benefit of the crops grown, and this is supposed to be his payment for the trees and his labour of watering and taking care of them till they reach the fruiting age, which is about twelve years.

"The second class are groves that have become the property of the landlord as lawáris property or by forcible possession, or by having had them planted for himself or his relatives generally. All the groves of a village that are the property of the landlord acquired by forcible possession or by the law of lawáris, are considered the property of the village at large. It is from these groves that the landlord gives some trees or a whole bágh to a cultivator as an adjunct to his cultivation.

"Now the planters of the groves of my first class cannot come under Rule III, because they are not other than mere cultivators, for they are nothing but ordinary kashtkárs or tenants-at-will. I would like to see Rule IV so altered as to admit of a mere cultivator, whose ancestors or who himself planted a bágh, retaining possession of the same rent

free, subject only to any portion of the fruit and wood or price of the wood if tree is cut down being given to the landlord that custom defines, and this too quite independently of his cultivation or of his residing in the village.

"As regards the second class I do not think any alteration is required in Rule IV, barring the making more clear the present wording of the said rule."

Extra Assistant Commissioner Ali Hosein of the Fyzabad Settlement states that by Rule IV a cultivator who plants a grove with the permission of a zamindár, (whether on payment of rent or otherwise) loses his possession of the trees when he is ousted or when his possession of the land ceases to exist, and that mention is also made in the concluding part of section 5 that the landlord is the owner of both the land and the grove. He adds that such a ruling as the above is contrary to the former and long established custom of the country, which permitted cultivators (or owners) of groves to alienate them, and on enquiry it will be discovered that such alienation was duly tolerated and admitted by proprietors inasmuch as they used to receive one-half or one-fourth of the proceeds of the sale.

He further writes that it also appears that when a cultivator lost his cultivation of the land he did not at the same time lose his possession of the grove, but on the contrary he remained in full possession of it as before.

Finally the Extra Assistant Commissioner is of opinion that a zamindár does possess a share in the groves, but to a certain extent only. The trees, says he, should be assumed as the produce of the land, and as a zamindár has a share in the produce of the land under cultivation, it is out of the question that a cultivator should deny him his share in the trees.

Ali Hosein in his observations on rights, other than those recorded in Rule IV, and in his remarks on the rent

of groves, follows Mr. Carnegy. Extra Assistant Commissioner Múnshí Sheopershad would propose to modify Rule IV by the addition of the following words.

"That a cultivator when ousted from his cultivation should not be ousted from his grove so long as he remains in the village and the trees stand on the grove land, but of course he shall have no power of alienation."

Sadr Munsarim Cherunjí Lál is of opinion that the holder of a grove possesses a heritable and transferable right in the trees but not in the land. Therefore to dispossess the planter of his grove is contrary to usage. Should he be ousted from his cultivation but continue to reside in the village, he may continue to hold possession of his grove on a reasonable rent.

He considers that para. 5 of the grove circular is in accordance with the prevailing custom of the country, and all alienations of groves made by holders of groves should be held valid.

Sadr Munsarim Hosein Ali's remarks on the tenure and rent of groves are of a general character, and an abstract thereof is given below.

That up to this time the zamindár enjoyed no other privilege than that he inherited the grove when the planter or owner of it died heirless. In the opinion of the Sadr Munsarim this rule should be made commonly applicable to all groves in future.

That groves planted on khalsa lands by cultivators with the permission of zamindárs should not be assessed if originally given rent free. Such an assessment would rather frustrate the intentions of Government in respect to the increase of plantations in Oudh.

That in some places owners of groves pay annually one rupee as núzerána to proprietors of villages. Where this practice exists it should be upheld.

When the produce of groves planted on land adjoining cities and towns proves remunerative, the zamindár is justified in assessing the land. When the produce of groves is sold by their possessors for support during poverty, the land should not be assessed, or a share of the proceeds of sale should not be paid to the proprietor, but under all other circumstances one-fourth of the sale produce should be given to the zamindár.

The power of cutting down the trees should be in the hands of the owners of the grove, and in like manner, but under the exceptional circumstances noticed below, the power of alienating groves by sale or mortgage should rest with the possessors.

On all sales of groves, one-fourth of the purchase money should be paid to the proprietor of the land; groves planted on lands adjacent to throughfares for the benefit of the public and for perpetuating the names of planters should not be liable to alienation in any way, either by the planter or by the proprietor of the land.

If through some cause or other the trees are destroyed so as to affect the appearance of the grove, it shall be optional with the proprietor whether to give permission or not for replanting them, but so long as the appearance of a grove is not affected, the planter shall have the power to replace the trees destroyed.

In regard to groves planted on mu'afí lands the Sadr Munsarim observes that until the groves be alienated by sales the mu'afídár should pay half of the produce to the proprietor, who in case of sale should be entitled to receive one-third of the consideration money.

In regard to groves planted on lands given to jagírdárs (in commutation of salary) without the permission of the proprietor, the Sadr Munsarim is of opinion that such groves should be assessed.

Colonel J. Reid writes as follows:—

"The rule (IV) affects only trees planted by cultivators, not trees planted by the landholders or others and given by the landholders to cultivators. It sometimes happens that a few trees are given and not a whole grove. There can I think, be no doubt that men who do not plant, but who get a grove or a few trees in this way, should lose all right to them when they lose their cultivation."

Colonel Reid thinks that the custom noticed by Mr. Carnegy, in his observations on Rule IV, is not a general one, and as a rule a man who does not cultivate in a village will not continue to reside in it, but the settlement officer's observation that the right of transfer was not exceptionally enjoyed is just. If any such special local usage is pleaded the issue should be fairly tried.

The Commissioner does not see how such a rule could be laid down as that proposed by Major Clark, that a cultivator who had planted a grove should be decreed a right of occupancy conditionally on his giving the land holder a portion of the fruit or wood or of the price of the wood if a tree is cut down.

Of the other rights mentioned by Mr. Carnegy, the Commissioner is of opinion that they must be disposed of on the same principle as other claims to rights in land.

In respect to Mr. Carnegy's suggestion to give compensation for trees as standing crops, the Commissioner says that any rule on this point could hardly be laid down.

Referring to Mr. Carnegy's proposal "that in groves of every description, whatever it may have been, in cash, or kind, the same will be paid now, subject, however, to enhancement on good cause being shown," the Commissioner remarks as follows:—

"This rule would be perfectly fair in all cases where the holder is found to have a right of occupancy, but it

would not apply where the landholder had the power to eject. In this case, under the Rent Act the parties would have to come to an understanding with each other. The same objection applies to the proposed rule in para. 33, regarding groves hitherto held rent free, and I don't see how we could issue such a general order. Each case should, I think, be decided on its merits, and the decree awarding possession of a grove should specify the terms on which it is to be held. The rule in para. 34 seems quite fair, but I believe that cases would be comparatively rare in which the holder retained a right in the land after the grove had disappeared."

16. *Seetapoor Division.*—It has already been stated under Rule I, that there is a wide difference between the tenures under which groves are held in the Seetapoor district, and those prevailing in the Roy Bareilly division.

Regarding rent of groves, Captain Young writes that it is entirely opposed to all custom that rent should in any case be demanded from grove lands except in the very modified form of a share of fruit sometimes, and of one-fourth of the price of timber, if sold, or of the timber itself if cut.

As to the rule laying down that in the case of a cultivator, ouster from his *holding* implies ouster from his *grove*, Captain Young says that all the officers whom he has consulted seem agreed that it is harsh and entirely opposed to custom, and in this opinion he fully agrees, and thinks the argument a sound one that, inasmuch as the meanest cultivator may not be ousted from his standing crops, albeit he has only tilled the land it stands on for a few months, much less ought a man to be ousted from the grove planted by his fathers and tended for many generations perhaps, without being allowed to take his crop, that is, the trees, with him, or being permitted to sell them.

In making the above remarks Captain Young writes. "I am not of course, advocating that such a man should

be allowed to sell or cut his grove, if ousted from his cultivation, but am endeavouring to show that it is impossible fairly to argue that ouster from the one, should imply the loss of the other."

Mr. Bradford, Settlement Officer Hurdui, states that "Rules III and IV are harsh and contrary to village custom. In reality the two cases might have been put under one head, but as long as the trees stand, the plots should be exempt from rent and the owner should not be ousted as long as the groves exist." Mr. Bradford considers that the owner may plant new trees as the old ones fall, so that the land may always be a "bágh," and this he may do without getting any fresh permission from the zamindár. "Kanúngoes and zamindárs," says the settlement officer, "tell him that his view is correct, the principle being that what has been given, has been given. The purpose for which the land was given is maintained."

The Settlement Officer then records his views on bághs situated in qusbas or towns, such as Sundeela, Bilgram, Shahabad, Sandee Palee, Gopamow, &c. Here he says "a complete right of property in bághs will be found, and the land under grove will amount to more than 10 per cent. of the total area of such qusbas, and this land, held perhaps by fifty or sixty different people, has never been considered an integral portion of the revenue paying part of the qusba, the tenure being complete and distinct from the khalsa, so much so that the proprietors, even when poverty induced them to cut down their trees and to cultivate their plots, were never asked to pay rent by the proprietors of the qusbas, and for years prior to annexation, though holding by no sanad, they enjoyed perfect immunity from payment of any rent or tax."

"Proprietors of the above," says the Settlement Officer, "are found in the principal districts of the North Western Provinces, such as Allahabad, Agra, &c., where their tenures have been respected, no revenue being levied from them.

Mr. Bradford then explains how the above tenure orginated during the native rule in Sandílah and other qusbas of the Hurdui district, and observes that as the British Government professes to carry on things as it found them in respect to the tenures in question, he is of opinion that the Reza Milkíut persons should not pay anything and must be exempted from assessment. He then alludes to the liberality of the Government in the 10 per cent exemption, and mentions that as the total area all over the province that has been released is often only 2 per cent, and seldom more than 3 per cent, so if in the qusbas all the grove lands be released the account will be very slightly swollen.

Major Boulderson, Settlement Officer, Kheree, remarks:—

"Standing groves or land once occupied by groves have not hitherto been charged with rent in this district, but in this respect the assessment of groves above 10 per cent of the total area may effect a change, although as a rule, few villages are found in which the area under groves exceeds that limit.

"There is however a feeling entertained that some limit should be imposed on rents chargeable on groves of cultivators, namely the rate at which the groves have been assessed by the Settlement Officer, or where no assessment has been made on groves, the proprietor should content himself with a light rent.

"My own impression is that if a government at all can interfere in the matter to that extent, it limits its own demand; but as the proprietor has often to pay revenue for large patches of waste in his village from which he derives no present profits, I do not think it would be consistent to restrict him in his demands or hamper his management. In this district groves are not strictly preserved for their fruit, and there has been no market for such produce, and as the state itself exacted no revenue on groves, no demands for rent were ever made or paid. The timber alone is of any value to the cultivator, who in difficulties cuts and disposes

of it, but in no other way is the possession of a grove any source of income in this district.

"Mortgages of groves are said to take place, but a common cultivator can only mortgage trees planted by him; he has no such power over the land. Ex-proprietors and shunkulupdárs, however, are considered to have power to transfer both land and trees, and this will doubtless be found to be the case elsewhere."

Assistant Commissioner Rai Ajudhya Pershad remarks on Rule IV. "There is danger in proclaiming that ouster from his holding implies ouster from his grove, of a cultivator, being a tenant-at-will. Many may thus be ousted from the former out of a device on the part of the zamindár to possess himself of the latter: no cultivator will on such terms dream of planting a grove. If the zamindár gets one-fourth in cash or kind in the event of such a grove being sold or cut, he has nothing to complain of."

The above remarks apply to groves in villages and not to those in towns and qusbás where the tenure is different and the property in land and in trees are vested in one and the same person. Such owners of groves, says the Assistant Commissioner, sell and cut and replant just as they like, and sell both land and trees together, and pay no sort of due or cess to the zamindárs, even if they cut the grove and cultivate it.

Extra Assistant Commissioner Brij Lál, and Sadr Múnsarims Pundit Somenath, Múnshís Múrtazá Beg and Naim Beg, concur in the above view.

Extra Assistant Commissioner Ikram Ullah thinks that the opinion of the Settlement Officer of Roy Bareilly, as to the possession of land cultivated by the holder of groves going with that of the trees, is both inequitable and contrary to the usage.

Extra Assistant Commissioner Hursúkh Rai follows the above officer, but adds that the fixing or otherwise of rent

on groves where the grove land exceeds the 10 per cent allowance rests with the zamindár, and in some places the power of alienating the grove rests with the owner and in some places with the proprietor.

Sadr Múnsarim Mahomed Yeha is of opinion that where a grove is planted with the consent of the zamindár it is, like lands under cultivation, liable to assessment, and the holder is competent to alienate the trees, but when the grove is exempted from assessment no alienation can be made without the permission of the zamindár.

Sadr Múnsarim Basait Ali thinks that a cultivator should not be ousted from his grove when he is ousted from his cultivation, and says that the right of alienating the trees rests with him.

He is of opinion that groves mentioned in para. 5 of Circular No. 53 must be assessed when found to exceed the 10 per cent area, and that when owners are desirous to sell, the landlord has the right of pre-emption.

The opinions of the native officers employed in the Kheree district are unanimous, that the rule which allows a cultivator to be ousted from his grove because he has lost his land is not founded on custom.

17. *Roy Bareilly Division.*—Mr. King would not propose any alteration to Rule IV. and para. 5 of the grove circular.

Mr. Forbes considers the rule to be needlessly arbitrary, and writes :—

"So far as my experience extends, it by no means follows that because a cultivator has been forced through enhancement of rent or by other circumstances to relinquish his holding he is therefore obliged to abandon his grove also. On the contrary his eviction from the latter and its appropriation by the landlord would be regarded by the community at large with decided disapproval, not to say repugnance

"At the same time, while I do not attempt to deny the power of the landlord to demand rent from a cultivator for his grove, such practice (except in the case of mohwa groves which may be almost held to be a distinct phase of tenure) is so universally opposed to existing custom that were a proprietor to exert that power he would expose himself to similar odium and distrust.

"If due regard be only had to the custom of the country and to general usage it will I think be almost invariably found in this part of Oudh, that a cultivator having once obtained the permission of the lord of the soil to plant a grove, has an undoubted right to the usufruct though not perhaps to the felling the timber (beyond the requirements of his own homestead) without the sanction of his landlord, and to remain in undisturbed occupancy so long as the trees are growing on the land."

Mr. McMinn believes that Circular No. 63 of 1863, should be altered if not withdrawn, but he thinks general directions for guidance more desirable than a set of fixed rules.

Major Perkins recommends no alteration to the circular.

Sadr Múnsarim Syad Mahomed Akber thinks that those holders of groves who have failed to established their right to the land acquired by sale or by a gift may be allowed only the right of enjoying the fruits of the trees planted thereon, so long as they reside in the village.

Sadr Múnsarim Mahomed Ismaiel Khan proposes no alteration to the rules.

Sadr Múnsarim Mahomed Abdúlla recommends that Rule IV be cancelled, for it is not in accordance with the existing custom to dispossess an ouster cultivator, of the trees planted by him or by his ancestors.

Extra Assistant Commissioner Pundit Madho Pershad is of opinion that a cultivator should not be ejected from

his holding when ousted from his cultivation, for according to custom he should continue in possession of his grove as long as he resides in the village.

Sadr Múnsarím Syud-úd-deen thinks that where the village proprietors have been in the habit of receiving a part of the produce of groves, there the grove land might with justice and agreeably to usage be assessed at Government rates. He knows of no custom which dispossesses a holder of his grove on his being ousted from the land of his cultivation.

Sadr Múnsarím Ali Hosein would not assess grove lands.

Sadr Múnsarím Khizir Mahomed is of opinion that a cultivator if ousted from his land and grove in 1255 Fuslee, can lay no claim to the grove now nor can another who claims through him.

Sadr Múnsarim Dhunput Rai agrees with the above remarks.

Major R. Ouseley has recorded in the 18 para. of his report under notice that the wording of this rule is so loose that the meaning is necessarily vague. He now refers to the tenure and rent of bághs and plots of poor lands originally granted for grazing purposes, (on which now stand trees) held rent free by cultivators for generations, and of bághs included in nankár, sír and shunkulup holdings, and proposes the following rules in modification of the existing one:—

Rule 1st, all holders, with the exceptions hereafter noted, of bághs, or waste lands who can prove their possession of them within the period of limitation, shall be entitled to hold them on a heritable and transferable, or under-proprietory tenure, on the best terms on which they held them within that period.

2. Any one cultivating groves or waste lands decreed as above to be liable to pay rent on all such lands. Old

proprietors at the rates decreed on sír lands in the same or adjoining villages and all others according to the rules in force at the time being for regulating the rents of tenants of their class.

3. All parties renewing old bághs, or making new plantations, on the land decreed as above, to hold such groves and plantations on the terms on which old groves have been decreed in that or adjoining villages.

EXCEPTIONS.

All cases in which it can be proved

1. That the grant was made on terms which admit of the resumption of it, or for the performance of some specific act which has remained undone, or for service, which the grantee is unwilling to render.

2. That any of the lands claimed by under-proprietors have been granted to them since they lost proprietory possession of the village and not in satisfaction of any former or dormant right, in which case the rent they will have to pay if they cultivated, should be adjusted according to the rules in force at the time being for the regulation of the rents of tenants of their class.

The above rules, observes Major Ouseley, would have a direct tendency to encourage the increase and check the destruction of plantations, because on the one hand they secure in them a highly beneficiary interest to certain parties as long as they remain such, whilst on the other they recognize the antagonistic rights of individuals in the produce of the land when once it loses the distinctive characteristic of plantations, and who in their own interests are sure to guard against the infringement of the rules.

A. H. HARINGTON,
Offg. Personal Assistant.
For Finl. Comr. Oudh.

3*rd July* 1869.