CHAPTER IV.

The Record of Rights.

42. *Particulars recorded.*—The order of Government under section 112 of the Orissa Tenancy Act, on which this settlement was started, specified the following particulars to be recorded :—

(*a*) the name of each tenant or occupant;

(*b*) the class to which each tenant belongs, that is to say, whether he is a tenure-holder, *bajyaftidar, raiyat,* occupancy *raiyat,* non-occupancy *raiyat,* under-*raiyat or chandnadar:* and if he is a tenure-holder, whether he is a permanent tenure-holder or not and whether his rent is liable to enhancement during the continuance of his tenure;

(*c*) the situation and quantity of the land held by each tenant or occupier;

(*d*) the name of each tenant's landlord;

(*e*) the name of each proprietor in the local area or estate;

(*f*) the rent payable at the time the record-of-rights is being prepared;

(*g*) in permanently-settled estates for which no record-of-rights has been framed before, the mode by which that rent has been fixed whether by contract, by order of a court or otherwise;

(*h*) if the rent is a gradually increasing rent the time at which, and the steps by which it increases;

(*i*) the special conditions and incidents (if any) of the tenancy;

(*j*) any right of way or other easement attaching to the land for which a record-of-rights is being prepared;

(*k*) if the land is claimed to be held rent-free, whether or not rent is actually paid, and if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and, if so entitled, under what authority.*

43. *Recording of status.*—In the present settlement the recording of status was done in such a way as to preserve the distinctions which the Act recognizes while eliminating as far as possible those which have no longer any legal significance. Thus many old expressions such as *thani, pahi, biswali pura jama,* etc. will not be found in the new records. The following account will show how the various statuses were recorded.

44. *Revenue free proprietors.*—The revenue-free proprietors or *lakhiraj baheldars* who have been recorded in *Khewat,* Part II, have still been described according to their different classes, e.g. *debottar, pirottar, brahmottar.*

The proprietors of Killa Patia and of the Ekhrajat *mahal* have been recorded in *Khewat,* Part II, although these estates are on a different footing from the ordinary petty *bahel* properties. Patia does not differ from the other permanently-settled Killas, except that it pays no revenue.

The ordinary revenue-free or *lakhiraj bahel* properties are those numerous small grants and endowments which have been exempted from revenue from the time of the earlier rulers and which were declared to be valid and confirmed in perpetuity under Regulations XII of 1805 and II of 1819. The detailed enquiries into the validity of all claims to hold such properties free of revenue were started in earnest at the settlement of 1837

*A notification was also issued under section 150 for the record of proprietor's private land.

and as a result an area of 331,641 acres was confirmed as revenue-free in perpetuity. The accuracy of this figure was doubted by Mr. Maddox, who found an area of 334,900 acres revenue-free. The total figure at this settlement is 337,638 including 1,936 acres in the permanently-settled tract of North Balasore.

45. *General and special numbers.*—When the systematic investigation of revenue-free claims was taken up in 1837 every claim within a village received a consecutive serial number in a general register, In Puri and Balasore the land shown under one entry in this register was treated as an estate but in Cuttack the number of entries was so large that all the entries referring to claims by one person under one *sanad* or batch of *sanads* were brought together in a special register under one entry. Each revenue-free property had thus in Puri and Balasore one number, the "general number", in Cuttack both a " general " and a " special number ".

46. *Classes of baheldars.*—The main classes of revenue-free estates are *debottar*, *pirottar*. *brahmottar* and *amritmanohi*. *Brahmottar* grants are grants to Brahmins which become the absolute property of the individuals to whom they are assigned. *Debottar* and *pirottar* grants are grants to Hindu idols or Muhammadan shrines and are essentially properties held in trust for those religious objects. *Amritmanohi* is a special term for grants in endowment of the Jagannath Temple at Puri. The management of these religious grants to deities or *pirs* lies with trustees who are designated *sebaits* or *marfatdars* in the case of *debottar* grants and *matwali* or *daroga* in the case of *pirottar*. The local usage of the terms *sebait* and *marfatdar*. varies. The word *sebait* is generally used for the trustees in whom the property is vested on behalf of the idol, while *marfatdar* is applied to those who look after the management and the routine duties in connection with the endowment. But occasionally the use of these terms is reversed, the superior authority being described as *marfatdar* and the actual manager as *sebait*, In this settlement the former usage has generally but not always been employed,

47. *Recording of revenue-free estates.*—The following extract from the *khanapuri* rules will explain the method of arranging and numbering the revenue-free *khewats* in Cuttack and Puri :—"These estates will be given the number (if any) which they bear in Register D, Part II. There will be a separate *khewat* for each Register D, Part II, and no land should be added to or taken from the land which is recorded under that entry. In Cuttack the special numbers comprised in each estate of Register D, Part II, will be entered in the remarks column of the *khewat*. In the district of Cuttack some estates of less than two acres do not appear in Register D, Part II. These will be entered in the *khewat* after the estates which do have Register D numbers. , . For those estates the special number will be entered in column 5, or if special number cannot be found, then the general number will be entered. If in the same village two or more estates which do not appear in Register D are found to be in possession of the same set of proprietors they should be amalgamated into one estate and one *khewat* entry." The method of recording adopted at this settlement has resulted in fewer estates and larger units.

In Puri the numbering of revenue-free *khewats* had to be based on the. D Register, which was rewritten after the fire of 1916.

The operations in Balasore were taken up before these rules were framed and in this district the revenue-free estates are known by their general numbers. The numbering of the *khewats* was in the serial order of the general numbers.

Great care was taken to see that revenue-free areas were accurately recorded. * The present areas were compared with those of last settlement in recess after *khanapuri* and discrepancies noted for enquiry in the attestation camps. In janch it was seen whether the discrepancies had been reconciled by the attestation staff.

* More particularly to see that land was not recorded as revenue-free which was not really revenue-free. P. T. M.

48. *Escheats of revenue-free properties.*—In the course of the settlement operations some revenue-free estates were found to have no legal claimant and were reported to the Collectors as escheated properties for action under Chapter XVI of the Board's Miscellaneous Rules. The following are the figures:—

District	Number of cases reported to Collector.	Number of cases treated as escheats by Collector.
Cuttack	13	2
Balasore	2	2
Puri	Nil	Nil
Total	15	4

49. *Tenure-holders.*—Tenure-holders have been recorded in *khewat*, Part III, or when their tenures are very small, in Menta Khatas.

50. *Sub-proprietors*—In Orissa there are certain classes of tenure holders whose position approximates to that of the proprietors of estates. Until the passing of the Orissa Tenancy Act in 1913 those "sub-proprietors," as they are called, had suffered some degradation, owing to their not being recognized by the statutory law. Those sections of the Bengal Tenancy Act which had been made applicable to Orissa made no mention of any such superior class of tenure-holders, and consequently they were in danger of becoming merged in the common body of tenure-holders. It was one of the objects of the Orissa Tenancy Act to restore the sub-proprietors to their proper position.

51. *Tanki baheldars.—Tanki baheldars* have been classed as sub-proprietors by the Orissa Tenancy Act, but their origin and position are peculiar. They are persons who at the British conquest were found paying quit rents, and whose title to hold their lands for ever on those quit rents was declared valid under the Cuttack Land Revenue Regulation of 1805.

52. *Other sub-proprietors.*—The other sub-proprietors hold their lands on temporary engagements to pay land revenue through a proprietor or (in a few cases) through another sub-proprietor. Their revenue is reassessed in the course of Land Revenue Settlement along with that of the proprietors During the last century there has been a growing tendency towards uniformity in the position of the various classes of sub-proprietors.

At the Provincial Settlement elaborate enquiries were made into the rights of each class of sub-proprietor, and these are explained at some length in Mr. Maddox's report (paragraph 294). The tenures were held to be hereditary and divisible, but no division of rents can be made without the consent of the proprietors. The sub-proprietors exercise the same rights within the village that the proprietors exercise in their *hastabud* villages. The tenures are liable to sale on default of payment of rent, On recusancy the *shikmi zamindars* and *kharidadars* of the first class, and *padhans* are entitled to a *malikana* of 5 per cent and also to claim re-entry at the ensuing Settlement, the *makadams* and the *knaridadars* of the second class entitled to 5 per cent on recusancy but not to re-entry. *Sarbarakari* and *kkaridadari* tenures of the second class are destroyed on recusancy.

53. *Recording of sub-proprietors*—The tenure-holders of the sub-proprietor class, who were always recorded in *Khewat*, Part III, were desctibed with their special designations of *makadam, sarbarakar, padhan purscthi, kharidadar. shikmi zamindar* and *tanki bahelder.** These tenure-holders occupy a distinctive position under the Tenancy Act, but the various classes are all on the same footing except that (1) *tanki baheldars* have their rents fixed in perpetuity, but they alone among sub-proprietors are not allowed to hold privileged lands (*nijjote*) and (2) *sarbarakars* alone have no

*The word sub-proprietor has been added in all cases where they were found to be such. P.T.M

statutory power to transfer their tenures without the consent of the landlords, and are governed by the provisions of section 16 of the Act. It appeared from enquiry during the settlement that the old distinctions between the various classes of sub-proprietors do not now have much effect. Tenure-holders of the sub-proprietary classes are all of permanent status and so it has not been considered necessary to add the word *istamarari* (permanent) to the entry of their status.

54. *Miadi and maurasi sarbarakars.*—At last settlement a distinction was recognized between two classes of *sarbarakars, maurasi* and *miadi.* The latter, as the name implies, were of a temporary character. Mr. Maddox at paragraph 285 of his report quotes a rule of Government by which "in cases in which hereditary succession or uninterrupted occupation cannot be shown, but the claimant himself has been long in possession and is in possession at the time of settlement, the Collector may.....propose a temporary admission of the tenure". It is clear from the following paragraph that even at that time the dividing line between *maurasi* and *miadi sarbarakars* was becoming very thin, and Mr. Maddox states that "in the present settlement no distinction except in name has been made in the engagements taken from temporary and permanent *sarbarakars* and their tenures are protected for the next thirty years".

At this settlement it was considered equitable to readmit the *miadi sarbarakars* to engagement, and not to preserve the distinction in status between them and *maurasi sarbarakars* although in a few cases the term *miadi* has been inadvertently repeated. These tenures are found in the estates of Rahang, Krishnanagar and Krishnachandra in Puri district, which are under one proprietress, who objected to this treatment of the *miadi sarbarakars* and sued them in the Civil Court for ejectment. The Hon'ble High Court has just given a decree for ejectment of the *miadi sarbarakars* subject however to the proviso that it is not to be executed in respect of such further term of appointment as the Collector may see fit to grant to them.

55. *Privileged and ordinary tenure-holders.*—Among tenure-holders not of the sub-proprietary classes the main distinction is between privileged and ordinary. The Act gives the *shkimi kharida, kharida jamabandi,* and *bajyafti* tenure-holders the statutory right to free transfer under section 15. They are permanent tenure-holders. The rents of *bajyafti* tenure-holderss are fixed for the term of the settlement, and they only occur in temporarily-settled estates.* A number of *kharida jamabandi* tenure-holders in Balasore have, since the Provincial Settlement, been recognized as sub-proprietors.

Ordinary tenure-holders, when their status is permanent, as is generally the case, are recorded as *istamarari madhyasatwadhikari.* In the permanently-settled estate, however, if the rent of the tenure-holder is not fixed in perpetuity the words *kintu chirasthayi jama nuhe* (but not on fixed rent) are added. Where the rent is fixed in perpetuity the status is recorded as *istamarari chirasthayi jama madhyasatwadhikari.* In the earlier seasons, however, the word *mukarrari* was often used instead of *chirasthayi jama.*

Temporary tenure-holders, when found, were recorded as *ijaradar* (lease-holder) or *miadi madhyasatwadhikari.* These are extremely rare.

Tenures held for maintenance are recorded as *khorak poshak madhyasatwadhikari.* They are fairly common, especially in the permanently-settled estates and in the temporarily-settled estates of the *killadari* type, such as Ambo and Balarampur. When granted to females they are ordinarily for life only, but when granted to males they are usually held until failure of heirs in the male line. The incidents column was used for specifying under what conditions these tenures are held.

The peculiar statuses found in the different permanently-settled estates are dealt with in the Chapter on those estates.

A *patni* tenure was found in Balasore district under tauzi nos. 1322 and 1357, which are temporarily-settled estates. It was created in 1877 by

*A very few *bajyafti* tenure-holders and *raiyats* have been inadvertently recorded in permanently settled estates in Balasore and Puri. These cannot be real *bajyaftidars* within the meaning of the Act and have not been treated as such for the purposes of the statistics.

a Bengalee landlord. The *patnidar* had to pay a small quit rent and in addition the Government revenue and cess. The tenure was not recognized at Provincial Settlement. In this settlement the tenure was recorded as an ordinary one and assessed to rent.

59. *Raiyati statuses:*—The simplification of status entries was particularly applied to those of *raiyati* holdings. I quote the attestation rule from the rules published in 1927 which were in turn based on the rules in force before that :—"In this record only five terms will be used for *raiyats* as follows:—

(*a*) *Chirasthayi jama, raiyats* at fixed rents (in P.S, estates)

(*b*) *Sthitiban,* settled *raiyats.*

(*c*) *Dakhal satwa bisishta,* occupancy *raiyats* who are not settled *raiyats.*

(*d*) *Dakhal satwa sunya,* non-occupancy *raiyats.*

(*e*) *Bajyafti sthitiban* or *bajyafti dakhal satwa bisishta.*"

For the guidance of Attestation Officers it was also laid down that "the following statuses found in the Revision Settlement will now be recorded as *sthitiban :—Thani pahi sthitiban, pahi sthitiban, sabik chandna sthitiban, jagir bajyafti sthitiban, biradaran patiadar pahi sthitiban, sanja pattadar sthitiban, biswali bajyafti pura jama sthitiban, biswali kharidadar thani sthitiban, chandna pahi sthitiban* and *thani sthitiban* ". Those old statuses were not considered worth retaining as they all come within the category of settled *raiyats* under the Tenancy Act.

57. *Bajyafti status* :—Similarly the different varieties of *bajyafti* status found in the previous settlement records have been ignored, and all tenants who are real *bajyafti raiyats* under the Act have been recorded as *bajyafti sthitiban* (the entry would be *bajyafti dakhal satwa-bisishta* if the tenant did not happen to be a settled *raiyat*).

The term *bajyaftidar* has been employed strictly in the sense given to it in section 3(2) of the Act, i. e. as referring to holders of land that was resumed under the Regulations at the settlement of 1837. As the word was more loosely used at previous settlements this has meant that the number of tenants recorded as *bajyaftidars* has decreased. Careful enquiries were made at attestation when any doubt arose whether a tenant was a real *bajyaftidar* or not. The guiding rule was laid down that " for practical purposes those whose status in the last settlement included the words *lakhiraj bajyafti* or *tanki bajyafti* will now be recorded as *bajyaftidars* and no others ". But further "it is likely that *adha jama bajyafti sthitiban, nisfi bajayfti sthitiban, kamil bajyafti sthitiban,* and *pura jama bajyafti sthitiban,* may be true *bajyaftidars.* Any one whose status was *jagir bajyaftidar* will not be a *bajyaftidar*", These rules were laid down after a careful study of the use of these various expressions at last settlement. Doubtful cases were referred for orders to the charge Officers and Settlement Officer. *Bajyaftidars* were recorded as tenure-holders or as *raiyats* according as they were one or the other at last settlement (see section 6, Orissa Tenancy Act).

58, *Encroachments on bajyafti lands.*—A number of small encroachments by ordinary *raiyats* on the lands of *bajyaftidars* were detected. Even when these encroachers had acquired title to the land by adverse possession it was not held that they had a right to be recorded as *bajyaftidars,* as they had not in effect exercised the privileges of the *bajyaftidars.* The lands thus generally became merged in the holdings of the encroachers and lost the attributes of *bajyafti* status.

59. *Utbandi tenants.—Utbandi* tenancies were occasionally found in *char or diara* lands. The lands recognized as such were those lying between the high banks of rivers, and according to the attestation rule *utbandi* status was given to tenants of such lands when it was found that the land settled with each *raiyat* and the rent payable by him are changed from year to year. If no such custom existed the tenant was recorded as a non-occupancy *raiyat* if he had not held for twelve years and as an occupancy or settled *raiyat* if

he had. Some landlords were found to be treating lands as *diara* which were not really of that nature. In Utikan estate some lands on the banks of the Brahmini were being so treated by the proprietor, who fixed rent every year at high rates. Where the lands were not clearly real *diara* lands the tenants were given occupancy status by the application of the ordinary law and fair rents were settled after special consideration by the Rent Settlement Officer.

60. *Jagirdar.*—The term *jagirdar* was defined in the attestation rules an "one who holds land rent-free or on a low rent in return for services rendered, and who is liable to ejectment on failure to perform such services." Care was taken to distinguish real *jagirdars*, as thus defined, from persons who are termed as such but who are really *raiyats*, who by arrangement with their landlords are rendering service instead of paying rent. In deciding this point the origin of the holding was enquired into. If it had originally been settled as a *raiyati* holding and then rent had been commuted to service, *raiyati* status was given, In such cases, on failure to perform services, the landlord is entitled to impose a fair rent but not to eject the tenant. True *jagirs* are those holdings which are held purely on condition of service, where the holder is liable to ejectment on his services being no longer required. The decision of this point was sometimes difficult especially in the cases of holdings such as the *ghenan jagirs* of the Aul estate, which pay quit rents but at the same time are burdened with conditions of service.

61. *Tankidars.*—The status *tankidar* is often found in use in permanently-settled estates. It was not recorded at this settlement, but such tenants were given their Proper status under the Tenancy Act—generally that of *raiyats* at fixed rates. When the status *tankidar* was found in temporarily-settled areas the landlords generally claimed that they were *jagirdars* holding on low rents, and it had to be decided whether they were in fact *jagirdars or raiyats.*

62. *Non-agricultural holdings.*—The treatment of homestead lands and non-agricultural holdings caused some difficulty and a uniform practice was not worked out until the operations had been in progress for a few seasons. Many of these holdings have *chandna status.* Mr. Maddox describes the *chandnadars* in paragraph 327 of his report. "Tenants other than *bhusbas* or respectable *thani* and resident *raiyats* have always paid rent for their homestead lands. In the case of the cultivating classes such lands were generally part of their *Pahi* holding, but the shopkeepers, artisans and labouring classes who having no arable lands in the village pay rent for their homesteads only are called *chandnadars. Pahi raiyats* also who having their home in one village hold house or homestead in another are sometimes known as the *chandnadars* of the latter village . . At the last settlement *chandnadars* were given leases securing to them fixity of rent for the term of the settlement and the incidents of the tenure do not materially differ from those of *thani raiyats*, except that they are governed by the Contract Act and not by Act X of 1859." At the Provincial Settlement the *chandnadars* again had their rents fixed for the term of the settlemant. The Orissa Tenancy Act recognized them as a class of tenants and so they are now governed by that Act. *Chandnadar* is defined in the Act as. "any person holding land which has been recorded as *Chandna* in the course of a settlement and for which a rent has been fixed for the term of that settlement". Thus all tenants recorded as *chandnadars* in the temporarily-settled estates at the Provincial Settlement had to be recorded as such again.

According to the attestation rule framed in 1927 homesteads belonging to agriculturists, who are not *chandnadars*, were recorded under the status *sthitiban* unless the landlord objected and could prove that *sthitiban* right could not be acquired in homestead lands. * Homesteads of non-agriculturists in the temporarily-settled estates were recorded as *chandna* if they had been so recorded at the last settlement or if they were not on leases for a fixed period, or had been described as *chandnadar* in a lease or in the landlord's papers. If not they were to be recorded as *Paikadars.*

*This is in accordance with High Court rulings (see Technical Rules, Vol, I Page 278),

In permanently-settled estates the status of *gharbari* was given to the homestead of a non-agriculturist who had made his permanent home in the house, and that of *pattadar* to those who were only renting the holding for a period. The status *chanadndar* could not be given to any tenant in the permanently-settled areas even when found so recorded at previous settlements, in view, of the definition in the Tenancy Act.

In urban areas under temporarily-settled estates it was often a matter of doubt whether tenants were entitled to be recorded as *chandnadars* or as *pattadars*. If the last settlement records did not make this clear the point had to be decided whether under the terms of the agreement between the parties the tenant was liable to have his rent resettled at time of revenue settlement under the Tenancy Act or whether he was a lease-holder governed by the Transfer of Property Act. *Pattadars* are not tenants under the Orissa Tenancy Act and their rents are not liable to be resettled under that Act.

63. *Incidents of chandna right.*—The Tenancy Act has left the incidents of *chandna* tenancies to be regulated by local custom and usage [section 236(2)]. Thus the decision of any question regarding the permanency of a *chandnadar's* tenure must depend on the custom of the locality. Some *chandna* holdings had been recorded at last settlement as *istamarari chandna* and these were again at this settlement recorded with this status, which was also given to some others who proved that they had permanent rights in their holdings. But the mere fact that the word *istamarari* is not found in the entry of a *chandnadar's* status should not be taken to imply that he is a mere tenant-at-will. Recent decisions of cases in the Jajpur subdivision have been to the effect that *chandnadars* are mere tenants-at-will in certain areas. It appears to me that the position of a *chandnadar* who is a mere tenant-at-will is a very anomalous one, as he is not liable to have his rent enhanced during the term of a revenue settlement, yet he can be ejected at the option of his landlord. This power to eject must render the fixity of rent ineffectual to all intents and purposes.

64. *Rent-free tenancies.*—The method of recording rent-free tenancies necessarily differed according as the land was in a permanently-settled or a temporarily-settled estate. In the former, to ensure the correct recording of such tenancies, the Attestation Officers had to draw up formal *niskar* proceedings in each village before making the entries in the rent columns of the *khatians*. If the tenancy was found to be rent-free in perpetuity the entry of rent was *chirasthayi niskar*, whereas if it was rent-free at persent but assessable to rent at any future date the entry was *niskar jamadharjya-jogya*. In temporarily-settled estates no rent-free tenancy is recognized by Government (except in the case of *desheta jagir* and *minha* lands). Where the tenant has the right to hold the land rent-free as against the landlord the entry made was *zamidar diake niskar* (in the special incidents column), and the revenue settlement the land was valued at the village rate. Where the tenant has no such right envn against the landlord the entry *jamadharjya-jogya* was made in the column for existing rent and the holding was duly assessed ro rent at rent settlement.

65. *Under-raiyats.*—Tenants holding, whether immediately or mediately, under *raiyats*, are classed as under-*raiyats* in the Tenancy Act. Their status was entered as *shikmi*. Where such tenants were found to have occupancy rights, by local custom or by consent of the landlords, their status was recorded as *shikmi dakhal satwa bisishta*. In attesting the rents of under-*raiyats* care was taken to see that they did not exceed the legal limits laid down in section 56. It was quite frequently found that they did.

66. *Nijjote lands.*—Proprietors' private lands as defined in sections 153 and 154 of the Tenancy Act were recorded as *nijjote* in separate *khatians*. In the temporarily-settled area it was only necessary to ensure that all lands recorded as *nijjote* in Revision Settlement or as *nijchas* in both the Provincial and the Revision Settlements were recorded as *nijjote* according to section 154. To ensure this, from Block B onwards, extracts were taken from the two previous records for guidance. In the permanently-settled estates which had not been included in the previous settlements it

was necessary for the Attestation Officer to decided after inquiry what lands answered the description given in section 153(*i*) (*a*) or (*b*), i.e. land which had been cultivated as *nijjote* by the proprietor for twelve years continuously before the passing of the Act or cultivated land recognized by village usage as *nijjote.*

When settled *raiyats* were found in occupation of *nijjote* lands and were not holding them on temporary leases they were recorded as having occupancy rights in those lands, as laid down in section 55(*a*). The status is *sthitiban babat nijjote*, or if the tenant is not a settled *raiyat*, *dakhal satwa bisishta babat nijjote.*

67. *Nijchas.*—The term *nijchas* was used for lands in cultivating possession of the proprietors, when these lands are not proprietors' private lands as defined in sections 153 and 154. Separate *nijchas khatians* were prepared.

68. *Anabadi, sarbasadharan and rakhit.*—Uncultivated lands in possession of the landlords were recorded as *anabadi* in separate *khatians.* But lands over which the public have acquired a right of way or other easement were generally entered in separate *khatians* as *sarbasadharan.* The only types of land so recorded were roads, *melan parias*, *bhagbat ghars*, and cremation or burial grounds. In some estates, especially those of petty revenue-free proprietors, no *sarbasadharan khatians* were prepared but the rights of the public were entered in notes in the remarks column of the plots, which were all included in the *anabadi khatians.*

Reserved lands were recorded in separate *khatians* as *rakhit.* The lands so recorded were those grazing grounds, cattle-paths, water channels, tanks and banks of tanks, which were reserved with the conset of the proprietors.

69. *Nij-dakhal.*—In petty revenue-free estates no separate *khatians* for *nijchas* and *anabadi* were as a rule prepared. All lands in direct possession were included in one *khatian* as *nij-dakhal.*

70. *Recording of special rents.*—Tenants are frequently found to be paying abnormally high rents for lands that are growing special crops such as *pan*, sugar, or tobacco.* The Tenancy Act does not give to the landlord any power to enhance the rent of a tenant by contract by more than 2 annas in the rupee (except on the ground of an improvement). The growing of a special crop is not recognized by the Act as a reason for any larger enhancement, nor indeed is it included among the grounds on which an enhancement can be claimed by suit (section 35). Hence where such abnormally high rents were found to have been imposed on holdings that had been held on a normal rate of rent at last settlement, these were treated as illegal and the old rents were recorded. Where the holding had been created since the last settlement and the high rent imposed *ab initio*, there was no illegality and the actual rent was recorded. In many cases of *pan* gardens the parties had agreed that the high rent should only be payable so long as *pan* was grown on the lands. In such cases a note was made in the special incidents column to this effect.

71. *Declared channels.*—The question of the proper method of recording streams that are "declared channels" under section 40 of the Bengal Irrigation Act III of 1876 came up at this settlement. These are natural drainage channels which are prohibited from being obstructed. The Gobri river is a typical example. At the Provincial Settlement these channels were recorded under the Public Works Department. At this settlement they have again been recorded under the proprietors (with notes on the *khatians* to indicate that they are "declared channels") as the notification of a stream as a "declared channel" does not divest the proprietor of his right, although it obviously restricts his exercise of it,

72. *Minha.*—The term *minha* has been used in this as in previous settlements to describe the homestead lands held rent-free by *raiyats*

*In Kujang the current rates for *pan* gardens are Rs. 50 to Rs. 75 per acre. Some first class tobacco lands in thana Kendrapara were found paying rent of Rs. 62-8-0 per acre although the usual rate for tobacco lands was only Rs. 8 in that area.

according to ancient custom. This right to hold rent-free is recognized by Government even in temporarily-settled estates and the areas recorded as *minha* are excluded from assessment to revenue. The liberal interpretation of Government orders in this matter at last settlement, described by Mr. Maddox in paragraph 466 of his report. was continued at this settlement, and the lands were still treated as *minha* even when in the hands of persons who possessed no other land in the village.

73. *Jagannath road-side lands.*—The Orissa Trunk Road, commonly known as the Jagannath Road, is in the charge of the Public Works Department. But some of the road-side lands are administered by the Collectors on behalf of the Jagannath Road Fund, the profits of which are utilized for the benefit of pilgrims. These lands have been recorded in the *khatians* of the Public Works Department along with the other lands of the road but an entry of " Jagannath Road Fund " has been made against every plot that is under the fund and the names of the occupants are also noted. The Collector of Cuttack made a request that these lands should be taken out of the *khatian* of the Public Works Department and recorded in separate *khatians* in the name of the Jagannath Road Fund but this method of recording the land was decided to be inappropriate, as the connection of the Public Works Department with the lands is not permanently cancelled by their administration on behalf of the Road Fund, and indeed the right of that department is mentioned in the leases.

74. *Government lands.*—An attempt was made to secure the accurate recording of lands under various departments of Government. In the early seasons. especially in Balasore, a number of mistakes were committed in this respect, but on their detection they were corrected by the exercise of the Settlement Officer's inherent power to correct obvious mistakes, due notice being given to all parties interested to be heard. Most of the departments showed a tendency to take no interest in the proceedings until it came to light that the record had not been prepared according to their wishes, and then to raise objections which at a late stage in the operations caused much unnecessary trouble and expense.

Lands acquired by Government were recorded under *Bharat Samrat* as well as any found to be occupied by Government without payment of rent. When they were occupied rent-free for any purpose with a condition that they were to revert to the proprietor when no longer required for that purpose this condition was entered in the incidents column.

The position of Government in some lands of the cantonment *khas mahal* was in issue in four cases which went on appeal to the High Court in 1916 (appeals from original decrees nos 7 to 10 of 1916). In his judgment, Mullick J. gave a detailed account of the history of these lands since the conquest in 1803. Some of the lands taken over by Government after the conquest for military purposes were held by persons who claimed to be revenue-free proprietors. Some time after 1828 an enquiry was made into the validity of these claims and 29 acres were confirmed as revenue-free while 63 acres were resumed. The whole question of buying out or otherwise compensating the proprietors had been discussed at great length but apparently never finally settled until 1837. In respect of the resumed lands the East India Company for some reason devised the very complicated arrangement of paying a certain sum annually to the *bajyaf idars* and then receiving back the same sum as revenue. In the cases of 1916 Government took up the position that they were permanent tenants under the *bajyaftidars.* Their lordships of the High Court were clearly of opinion that in reality the sums paid to the *bajyaftidars* as well as to the confirmed *lakhirajdars* were not rents but annuities intended as compensation. But as Government had chosen to take upon themselves the position of tenants. the only question that had to be determined was what was the nature of the tenancy. The finding was to the effect that the tenancy was a permanent one. This explains why in cantonment *khas mahal* Government are recorded for some lands both as proprietor and as permanent tenants under the *bajyaftidar* tenure-holders, with under-tenants in some cases under them.

75. *Navigable rivers.*—At this settlement the question of the right of property in the beds of large tidal and navigable rivers in the coastal Killas was raised for the first time. At the Provincial Settlement the same question was raised with reference to the navigable rivers in the temporarily-settled area. The Advocate-General indeed pronounced the opinion that the property in the beds of navigable rivers belongs to Government but as these river beds had been included in the area of estates at the previous revenue settlement and were of little value, it was not considered worth while to record them under Government, except in Balasore. The lower reaches and estuaries of the Baitarani, Mahanadi and Devi lie in permanently-settled estates which were not included in the Provincial Settlement. The question was first taken up in 1928 in a section 116 case of which the subject matter was the bed of the Baitarani in Kanika estate, in so far as it had been surveyed in this settlement (the mouths of this and other large rivers, where they are not included in villages, were not surveyed). The beds of the Mahanadi and Devi and other rivers in Kujang, Harishpur, Marichpur and Bishunpur were also dealt with in section 116 cases in the following season. As a result of these cases the beds of the large tidal and navigable rivers were recorded as the property of Government. Several rulings were referred to, the most important of which is that in the case of Satcourie Ghosh Mandal *versus* the Secretary of State in Council (I. L. R. 22 Cal., p. 257), where it was held that "it may be accepted as the law on this side of India that the beds of tidal and navigable rivers are vested in the Crown, and that the right of *jalkar* (fishery) as also the bed of the river itself may be granted by Government to private proprietors subject, of course, to the right of navigation and such other rights as the public has in such rivers". The landlords of the estates attempted to prove that their original treaty engagements contained a grant of the river beds, but this was not found to be implied in these documents. They equally failed to prove the acquisition of a right by prescription. It was therefore held that the ordinary law should prevail, and the river beds were recorded under *Bharat Samrat.* The specific question of fishery rights was not adjudicated upon. It appears that by long and uninterrupted use the landlords have acquired the full right to the fisheries, which are incorporeal hereditaments and capable of acquisition apart from the ownership of the soil.*

The decision to record navigable rivers under Government was limited in its application only to the greater rivers. In Kujang the Mahanadi, Paika, Chitratola, Nuna, Jambu, Gangana and Gandaka rivers were so recorded, in Marichpur the Devi, and in Harishpur the navigable part of the Alanka. In Bishunpur the Alanka was recorded under the proprietors.

76. *Miscellaneous points.*—The glossary attached to this report will explain most of the terms used in the record-of-rights. The following points may be mentioned here :—

(1) The column for *abadi* area in the *Khewats*, Parts I and III, is used for entry of all areas included in holdings, and does not correspond exactly to the cultivated area.

(2) When a holding had been transferred and the landlord had not recognized the transferee, the name of the original *raiyat* is entered first in the *khatian* and the transferee's name is then entered after the words *kharid sutre dakhal*, meaning that the latter is in possession as a purchaser.

(3) The status of *mafi kharidadar*, which Mr. Maddox describes in paragraph 289 of his report, has again been recorded at this settlement.

(4) The column in *Khewat*, Part III, for extent of interest is only used when the tenure is in respect of a specific share in the estate, and not in respect of specific lands.

*It is reported that this view was not accepted by the Collector [of Cuttack, who leased out some of this fisheries as a test case. P. T. M.