

SELECTIONS  
FROM THE  
RECORDS OF THE GOVERNMENT  
OF THE  
PUNJAB AND ITS DEPENDENCIES.

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NEW SERIES—NO. XIII.

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PAPERS

REGARDING

ALIENATION OF ESTATES OF INSOLVENT PROPRIETORS TO THE  
MONEY-LENDING CLASS.

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REGARDING

#### ALIENATION OF ESTATES OF INSOLVENT PROPRIETORS TO THE MONEY-LENDING CLASS.

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Proceedings of the Hon'ble the Lieutenant-Governor of the Punjab in the Home Department, No. 4609, dated 23rd December 1874.

READ the following papers :—

From Registrar, Chief Court, No. 1593, dated 28th June 1872, forwarding Minute by Mr. Justice Melvill.

From Secretary to Government, Punjab, to Registrar, Chief Court, No. 2271, dated 28th June 1872.

Circular of the Chief Court, No. 3 of 1873.

From Registrar, Chief Court, No. 690, dated 6th April 1874, forwarding opinions of Mr. Justice Boulnois, Mr. Justice Lindsay, and Mr. Justice Melvill.

From Registrar, Chief Court, No. 1643, dated 2nd July 1874, forwarding Notes by Mr. Justice Boulnois and Mr. Justice Thornton.

Annual Report of the Revenue Administration of the Punjab for 1873-74, paragraphs 149 to 150 inclusive.

REMARKS.—The question discussed in the above correspondence is one which has of late attracted considerable public attention not only in the Punjab but in other parts of India, and may be briefly stated as follows :—

Is further legislative action required to protect the peasant population from the usurer and save their lands from alienation by sale or mortgage to the money-lending class ?

2. So far as the Punjab Government is concerned, the subject is not a new one. The impolicy of leaving the peasantry to the mercy of the usurer, and of permitting too rapid or wholesale dispossession from their hereditary lands of old proprietary tribes, has from the first been

recognized and has largely influenced both its revenue and judicial administration.

3. With regard to revenue administration, light assessments and prompt remission or suspension of demand in unfavorable seasons have been freely granted, and it is satisfactory to observe that the indebtedness of the agriculturist, which is said to call for legislative interference, is attributed not to the undue pressure of the land revenue, but to the extravagance resulting from high credit and the increasing value of land.

4. In the Judicial Department a wide discretion has long been exercised by the civil courts in reducing extortionate claims for interest by money-lenders against agriculturists, and attention has been of late specially called to the subject by the learned Judges of the Chief Court in a circular which will be found amongst the annexures of these proceedings, and under instructions issued by them agricultural implements, including plough-bullocks, gear of wells, houses and sheds, are exempted from attachment in execution of decrees for debt.

Again under Section 244 of Act VIII. of 1859, temporary alienation of revenue-paying land may be substituted by order of court for sale of such land in execution of decrees for debt under the provisos with which that Act was extended to the Punjab; no ancestral or joint-acquired property in land can be sold in execution save with the sanction of the Chief Court, which is rarely accorded; and under the law of pre-emption, contained in Sections 9 to 14 of the Punjab Laws Act of 1872, every voluntary sale of land within a village boundary is voidable, unless it is first offered to the co-sharers of the village, and in the event of their declining, to the other members of the village community. It is further to be noted that under the general law of India all written instruments of transfer of immovable property of more than Rs. 100 in value are invalid unless publicly registered; that in regard to mortgages no foreclosure can take place except under orders of court, and in these cases also in the case of the Punjab the law of pre-emption applies; and lastly that the wide definition of "undue influence," contained in Section 16 of the Indian Contract Act of 1872, gives the courts the most ample power to prevent the enforcement of agreements which are not absolutely voluntary.

5. It is now to be considered whether any *additional* safeguards and restrictions are required to protect the agriculturist from ruin.

The necessity for further legislative action was first advocated by Mr. Justice Melvill in 1872, and on his suggestion enquiries were instituted by the Chief Court with the sanction of the Lieutenant-Governor in every district in the Province; subsequently in his review of the Land Revenue Administration of 1872-73, the Lieutenant-Governor drew the attention of the Financial Commissioner to the subject, and that officer made it the subject of special enquiry during the past official year. The result of the enquiries thus independently conducted is contained in the correspondence above referred to, copy of which is appended to these proceedings; and it will be perceived that

the conclusions arrived at by the superior officers of the Province are widely different.

6. Mr. Justice Melvill, to whom the Lieutenant-Governor is much indebted for the attention he has devoted to this important subject, retains the opinion that, notwithstanding the restrictive laws in force, there are still grounds for believing that owing to the usurious rates of interest charged by the money-lending class, the agriculturists are becoming deeply involved, and are being driven by pressure of creditors to transfer their lands by sale or usufructuary mortgage into the hands of strangers. He considers, therefore, that legislative action is called for and recommends—

- (1.) That courts should be enjoined to “look behind the terms of a bond so as to unravel the real nature of the transaction and ascertain the principal amount with a view to the adjudication of such a sum by way of interest as might seem equitable in cases where, owing to the absence of free consent, the elements of a perfectly enforceable contract were wanting ;”
- (2.) That the term of limitation for claims on account should be extended from 3 to 6 years ;
- (3.) That further restrictions should be placed on the voluntary sale or mortgage of lands by providing—
  - (a.) That no transfer of land shall be permitted in payment of debt to a creditor, and
  - (b.) That no mortgage shall be valid for more than the lifetime of the mortgagor without the sanction of official authority ;—
- (4.) That so much of the produce of land as represents the cost of cultivation should be exempted from attachment ; and
- (5.) Lastly, that imprisonment for debt should be abolished.

7. Mr. Justice Boulnois expresses inability to write at length on the very difficult and important questions raised, but gives an opinion in favor of an extension of the law of limitation and the prohibition of sales of land in execution of decrees held by mahájans for debts, and also of the abolition of imprisonment for debt.

8. Mr. Justice Lindsay, on the other hand, altogether doubts the necessity for legislative action, and Mr. Egerton, the Financial Commissioner, after reviewing the statistics of transfers of land for the past five years, is of opinion that there is nothing alarming in the extent to which land is being transferred, but that, on the contrary, a natural and healthy process is going on which should on no account be interfered with.

9. Such being the conflict of opinion amongst the superior officers of the Province as to the necessity for legislation, it appears desirable, before discussing the suitability of all or any of the measures proposed

by Mr. Justice Melvill, to scrutinize carefully the grounds on which their necessity is asserted, to consider whether the extent of the evil is really such as to call for legislative interference,—in other words, whether there is any sufficient evidence that the agriculturists are to an alarming extent indebted to the money-lender, or that the transfer of lands is being effected to a serious extent to the money-lending class.

10. From a reference to Mr. Justice Melvill's final minute, and the voluminous reports upon the subject which have been obtained from the office of the Chief Court, it would appear that those who believe this to be the case found their opinions not so much upon a comprehensive survey of facts as upon their own experience and impressions, or the opinions and impressions of others. Such opinions and impressions are indeed most valuable, but it is to be remembered that they proceed for the most part from judicial officers engaged perhaps day after day in presiding as judges of civil courts in rural tracts where suits against agriculturists form, as might be expected, the staple of litigation; it is easy to understand that officers so occupied should take a gloomy view of the financial position of the peasantry: but opinions thus formed, being necessarily the result of limited observation, cannot be accepted as conclusive. Moreover, even judicial officers are by no means unanimous on the subject. The difference of opinion among the learned Judges of the Chief Court has already been adverted to, but besides Mr. Justice Lindsay, Lieutenant-Colonel McMahon, the able Commissioner of the Hissar Division, Mr. Gore Ouseley, the Commissioner of Umballa, whose long and varied experience in this and other provinces gives great weight to his opinion, the late Mr. Blyth, whose acquaintance with the feelings and wants of the people was perhaps unsurpassed, have recorded their opinions that no case is made out for further legislative interference. This view appears further to be in accordance with popular opinion, so far as that opinion has been ascertained; for it is stated that Lieutenant-Colonel Mercer, the Deputy Commissioner of the Jullundur district (one of the districts especially mentioned by Mr. Justice Melvill as requiring relief), convened a public meeting comprising representatives of all the classes most interested in the question, namely, zamindars who were in debt and had transferred their lands to meet the demands of their creditors, zamindars who were free from obligation, and money-lenders who held the lands of their constituents by right of sale or mortgage, and money-lenders who had no such interest in the land. The question having been put whether any alteration in the present law was desirable, it was found to be the unanimous opinion that no further restriction should be placed upon the sale or transfer of land than that which would prevent fraud or undue advantage being taken; that any legal prohibition against usurious rates of interest would affect both lender and borrower injuriously and diminish the market value of land, and that no alteration in the law of limitation was called for.

11. The Lieutenant-Governor's sympathies are entirely with those who would use all reasonable means to protect the agriculturist from

extortion, and he is not disposed to attach too much weight to the opinions expressed adverse to legislative interference.

Nevertheless it appears to His Honor that before a sound judgment can be formed upon this important question, a far wider survey of the facts is necessary than that which has been taken by the advocates of special legislation.

Too sweeping conclusions must not be drawn from individual cases; the number of the indebted must be viewed in relation to the number that are prosperous; and the amount of land transferred with reference to the amount transferable. His Honor will endeavour to view the matter from this standpoint.

12. Looking, then, in the first place at the statistics of Civil Justice, it appears that while the total number of agriculturists in the Province is upwards of 10,000,000, the total number of suits for debt brought against this class does not exceed 80,000 in the year, so that in one year 1 agriculturist out of 125 is annually sued for debt; but a reference to the Blue-Book of Judicial Statistics annually laid before Parliament will show that in *England and Wales about 1 person in 22 is annually sued for debt in the county courts alone*, and this notwithstanding the fact that the period of limitation for suits on account is twice as long as in this Province.

So far, then, as freedom from debt suits is a test of solvency, the agriculturists of the Punjab must be considered far better off than the inhabitants of England.

13. But again—Is there any valid ground for supposing that the agriculturist is being driven by pressure of debt to transfer his lands to others to any serious extent?

The Financial Commissioner has during the year furnished statistics which afford an answer to this question. From these statistics it appears that during the last five years—

- (1).—Sales of land for debt in execution of decrees of court were almost unknown: only one sale of ancestral land was sanctioned in 1873:
- (2).—That the number of voluntary sales of land averaged less than 6,000 per annum, so that as the proprietors of land, according to the Financial Commissioner's returns, number 2,006,670, only 1 proprietor out of 334 parts with land in the year:
- (3).—That the number of mortgages averages less than 15,000 in the year, being at the rate of 1 mortgage to 133 proprietors:
- (4).—That the aggregate area of assessed land annually transferred by private sale amounted on an average to less than 1 acre per square mile; that during the past year there were only 6 districts in which more than 1 acre

per square mile was transferred, and in only a single district more than 2 acres per square mile :

- (5).—That, on an average, not more than 2 acres per square mile were annually mortgaged, that last year in only 7 districts did the number of acres exceed 3 per square mile, and of these districts 5 are among the most prosperous and wealthy in the Province :
- (6).—That the value of land is steadily rising in the market and last year averaged 28½ years' purchase of the Government assessment.

14. Assuming, then, as the most unfavorable view of the case possible, that all these transfers of land are made to money-lenders and in consequence of pressure of debt, it will be seen that the number and extent of such transfers are insignificant, and the only fair deduction to be made from the statistics is that the proportion of extravagance which prosperity and credit naturally produce is, in the Punjab, most creditably small.

But in point of fact there appears no valid reason for supposing that *all* these transfers, whether by sale or usufructuary mortgage, are made to the money-lending class, or are in consequence of pressure of debts. Some of the sales are doubtless the result of the high prices offered, and many of the mortgages for the purpose of raising capital for agricultural improvements, while the law of pre-emption places a most effective check on the acquirement of village lands by other than members of the proprietary body ; and it is shewn by statistics collected in one district of the Province that the bulk of the transfers of landed property are made *not* to village bankers but to brother-agriculturists. So far then as statistics are concerned, it would appear that the apprehensions which have led to a call for legislative interference are at present without adequate foundation.

15. But His Honor does not base his opinion on statistics alone ; in the course of his annual tours he has visited every district of the Province, and the result of his enquiries corroborates the above conclusion : he has found that though there may be individual cases of embarrassment due in most cases to personal extravagance, the state of the peasantry is in general eminently prosperous ; and he concurs with the Financial Commissioner (who is also well acquainted with every part of the Punjab) in the opinion that the transfers which are taking place do not exceed, or indeed nearly equal, the number which may safely accompany the natural and healthy development of wealth in a country in backward circumstances.

16. There is, the Lieutenant-Governor thinks, great reason to fear that to increase the restrictions on the sale or transfer of land in the manner proposed, or to further interfere with the freedom of contract between the money-lender and the agriculturist, would operate simply to depreciate the value of land as a security and raise still higher the rate of interest, and, while the measure would fail to teach prudence



to the improvident, it would tend to destroy the habit of self-reliance and industry which characterizes many of the cultivating races of the Punjab, and is one great cause of its agricultural prosperity. Finally, to extend the period of limitation in debt suits would, His Honor apprehends, only stave off and ultimately intensify the evil it is sought to remedy.

17. Fully sensible of the dangers attending the indiscriminate application of the received doctrines of political economy to unforeseen circumstances, His Honor is, as were his predecessors, prepared to sacrifice, if necessary, a large amount of theory to secure contentment among the people; but it is a matter of congratulation that in the present state of the Province no such exceptional action is called for. All that appears necessary is that the civil courts should bear carefully in mind the instructions contained in the Chief Court's Circular No. 3 of 1873 on the subject of awarding interest. Should cases of individual embarrassment largely increase in any district it may be perhaps necessary to extend the provisions of the insolvency sections of the Punjab Laws Act to the locality, or to recommend the extension to this Province of Section 154 of the Land Revenue Act of the North-Western Provinces, enabling the district officer to assume the management of the lands of a disqualified proprietor; but even these measures appear hardly called for under present circumstances. Meanwhile the subject will continue to receive His Honor's careful attention, and endeavour will be made to obtain more complete statistics on the subject.

18. One other subject touched upon in this correspondence requires notice,—the proposal to abolish imprisonment for debt. This subject is one which must be considered from a wider point of view than its effects upon the peasantry in whose case, as pointed out by Mr. Justice Melvill, it is rarely resorted to.

But looking at the statistics of Civil Justice, it appears that in the year 1873 though the number of applications for execution disposed of was 110,384, in only 6,107 cases were judgment-debtors arrested; that out of these it was only found necessary to detain 708, and that of those detained the great majority were released before the expiration of three months. It is further to be observed that any judgment-debtor who satisfies the court that he has no assets and has not committed fraud is at once released, and that information as to the law on the subject is hung up in every civil debtors' ward. Now, having regard to the fact that the sale of land in execution of decrees is, in the Punjab, practically prohibited, that execution against other property is constantly evaded by concealment of assets, or vexatious claims to property attached, and lastly the fact that the existing rate of interest charged is said to be exorbitantly high, His Honor is doubtful of the expediency of reducing the security of a creditor still further and raising his rate of interest by depriving him of a means of compulsion which is found to be eminently effective, is not shewn to be abused, and is so fenced with precautions as to be almost incapable of being made an engine of oppression.

ORDER.—Ordered that a copy of the above proceedings be sent to the Registrar, Chief Court, in reply to his letter No. 1643, dated 2nd July last, and previous correspondence, and that a copy be sent to the Financial Commissioner for information, and with request that he will endeavour to furnish with the Revenue Report for 1874-75 more complete statistics regarding the sale and mortgage of land. These statistics should show, in addition to other particulars, the amount of land voluntarily sold during the year in consequence of pressure of debts. In regard to mortgages they should show—

- 1st.—The amount of land already mortgaged, the amount for which mortgaged, and the assessment of the mortgaged land :
- 2nd.—The amount of mortgaged land actually in the possession of creditors :
- 3rd.—The amount of land mortgaged to agriculturists and money-lenders respectively :
- 4th.—The number and amount of mortgages effected during the current year, the amount for which mortgaged, the assessment of the mortgaged land, and whether mortgaged to agriculturists or money-lenders ; the amount of mortgage in consequence of pressure of debt and for the purpose of raising money for agricultural improvements respectively, and lastly the number and value of mortgages redeemed.

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No. 1593, dated Lahore, 15th June 1872.

From—J. A. E. MILLER, Esquire, Officiating Registrar, Chief Court, Punjab,  
To—The Officiating Secretary to Government, Punjab.

I AM directed to forward herewith a copy of a minute prepared by Mr. Justice Melvill on the subject of the law of interest, the extent to which interest is allowed to accumulate in suits for debt, and the manner in which the present law causes hardship to the agricultural classes, and leads to numerous alienations and transfers of land.

Mr. Justice Boulnois and Mr. Justice Melvill concur in thinking that the subject is most important, and they are highly desirous that it should be laid before Government as early as possible with a view to local enquiry being made as proposed.

Mr. Justice Lindsay has no objection to an enquiry being made, as suggested by Mr. Melvill, but he declines at present to give any opinion on the subject-matter of Mr. Justice Melvill's minute, and on the question whether the law relating to interest should be modified. All the Judges, therefore, agree in recommending that enquiry be made by local officers on the points stated in paragraph 19 of the minute ; and, if the Government approve of this proposal, the Court will be glad to

receive permission to circulate the minute for the enquiry accordingly, unless the Government should prefer to make that enquiry from local officers direct.

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Memorandum by Mr. Justice P. S. MELVILL, Officiating Judge, Chief Court, Punjab, on Interest in the Punjab.

I HAVE reason to believe that the action of the civil courts in the Punjab is frequently, and perhaps generally, oppressive on debtors in regard to the amount of interest decreed on sums due for the time that has elapsed between the date the debt became due to the date of the institution of the suit.

2. There is reason to believe that in consequence of decrees being given for even so much as three and four times the amount of the principal, land and other immovable property has been frequently alienated by order of court in the execution of decrees; that debtors against whom decrees have been passed have occasionally transferred their lands to their creditors without awaiting the coercive processes of the courts; and that debtors who have not yet been brought into court at all have been heretofore, and are now very commonly, selling and mortgaging their lands to creditors, who are, as a rule, of the bania or other money-lending class, in payment of debts that have been inordinately swelled by interest and compound interest, fearing that, if sued in court, they will get no relief from the interest brought out against them.

3. Those, again, who contract fresh debts find it very difficult to free themselves, owing to the excessive rate of interest charged. The debtors belong generally to the agricultural class, and their payments are commonly in kind. Their produce is too often taken at an arbitrary valuation, to which they are compelled to assent, seeing how hopeless it is otherwise to stave off the threatened suit, which will bring on them dishonor, if not ruin,—a suit which becomes formidable, not so much from the amount of the principal as from the accumulation of excessive interest.

4. I know it to be a fact that in parts of the Jullundur and Hoshiarpur districts, which are the very richest districts in the Punjab, and where the revenue assessment is admittedly light, land has been, and is now being daily, transferred, by sale or mortgage, to money-lenders in payment of old and new claims, and chiefly because of the impossibility of meeting the demand for interest, passed and current.

5. Apart from the hardship and injustice thus exercised on the very backbone of the country composed of a patient, hard-working, and law-abiding race, which pays the larger portion of the Government revenue with wonderful punctuality, there is a serious political danger to be apprehended from placing in the hands of the trading classes the power of rendering the lives of their debtors miserable, and of depriving them, either by the direct action of our courts, or by the threat of instituting a suit, of their ancestral lands.

6. Whether regarded in an equitable or a political aspect, I apprehend that, if the state of things above related does exist, the Government may consider that there is reason to give such relief as shall protect debtors from the payment of usurious interest.

7. The existing law about interest demandable for the time prior to the institution of a suit in court is to be found in Acts XXXII. of 1839 and XXVIII. of 1855.

8. The abstract of Act XXXII. of 1839 (Fagan's Edition) is as follows:—"The court may allow interest at the current rate on all debts and sums certain from the due date, if such date be fixed by a written instrument, or, if otherwise, from time of demand of payment and notice to debtor that interest will be claimed from such date."

9. Section 1 of Act XXVIII. of 1855 runs thus:—"In any suit in which interest is recoverable the amount shall be adjudged or decreed by the court at the rate (if any) agreed upon by the parties; and if no rate shall have been agreed upon, at such rate as the court shall deem reasonable." In regard to this section it is expedient here to notice that the Bombay High Court (4, Bombay Reports, A. C. J., 202) has held that it does not preclude courts from declining to enforce extortionate agreements made between parties standing to each other in such relations as to enable one to take advantage of the other.

10. So far as the question in hand is practically concerned, it is confined to the case of agreements made to pay interest. These agreements are of two kinds, *viz.*, 1st, where a specified rate of interest has been agreed on; and 2ndly, where to an old debt interest has been added and a bond has been drawn out for the total amount bearing further interest. It not unfrequently happens that this last process is repeated over and over; so that the sum entered in the final bond represents a very small proportion of principal.

11. By the law, as it now stands, the courts must decree any amount of interest that has been agreed upon by the parties, unless the amount is extortionate.

12. The opinions of men differ as to what is an extortionate amount of interest. Where a debt has gone on for 20 years, and the interest, calculated at a moderate rate per annum, has amounted to four times the principal, the demand would not appear to many to be excessive; and in like manner where a bond has been solemnly entered into by an agriculturist, the main issue before the court is the execution of the bond. The question of consideration is not vital, and the plea that the bond was composed of a modicum of principal and a mass of interest would in most cases receive but little regard. A decree would be given on the bond.

13. As to the interest that may be decreed between the institution of the suit and the date of the decree and from the date of the decree till payment, sufficient discretion is given by law\* to the courts; and it very rarely happens that more than 6 per cent. is given by the courts on this account, and very frequently no interest is allowed at all.

\* Section 10, Act XXIII. of 1861.

14. It is now desirable to refer to the provisions of the Punjab Civil Code on the subject of interest. They are contained in clauses 4, 5, and 6 of Section 19, and are as follows :—

“ 4. The courts are not bound by any restrictions with regard to usury. Debtors and creditors are allowed to arrange the terms and conditions of interest in whatever manner they may deem most conducive to their mutual benefit. The courts will decree whatever rate may have been agreed upon *bond fide* between the parties. If no special rate shall have been agreed upon, then the court will fix what may appear an equitable amount with reference to the custom of the locality, the usage of trade, or the merits at the transaction. It will be remembered that the rates of interest vary for different classes of cases and in different places.

“ 5. If in any case the amount of interest shall be deemed unjustly usurious, the court will decree only as much as may appear just under the circumstances.

“ 6. The period during which interest is demanded must not exceed 12 years. If a portion of this period be anterior to British rule, the amount of interest for that portion will be adjusted on the same principles as for the remaining portion subsequent to British rule. If debtors have, previously to British rule, signed bonds for exorbitant interest according as the creditor may for the time have presented the balance of accounts, which amount of interest could never, perhaps, have been recovered if the native rule had continued, but which interest is now claimed for recovery through the courts, then the Judge will consider the relative position of the two parties and the merits of the transaction, and will decree as much interest as may seem equitable. The debtor need not be compelled by the court to pay the entire amount of interest if there be reason to believe that the bond was executed through fear or ignorance.”

The following remarks are taken from the Commentary to the Code :—“ It is therefore recommended that the court should first regard any explicit *bond fide* agreement entered into by the parties or, in absence of that, the custom which would naturally govern that class of transactions to which the case in question may belong. Anything like oppression or extortion would of course be discouraged, and the court would extend its protection to an unsophisticated debtor who might appear to have fallen into the hands of an astute and grasping creditor. This has been provided for in Clauses 5 and 6.”

15. The Punjab Civil Code is not law. The Punjab Laws' Act ( Section 7 ) does not help us in this matter. The law the courts must follow is that contained in Acts XXXII. of 1839 and XXVIII. of 1855.

16. I believe I am correct in stating that in the Sikh rule the custom throughout the Punjab was that no creditor could recover as interest more than half the amount of the principal where the thing due was money, or more than an equivalent amount to the principal where the thing due was produce ( *nakd ka doedha and jins ka duna* ). By the Hindu law interest on money must never exceed the principal,

though it would appear that a bond for the amount of the principal and interest not exceeding the principal might bear future interest (Strange's Hindu Law, Edition of 1864, p. 299). Hindu law is but of little force in the Punjab, and I quote it to show that the principle it enunciates in regard to interest is, to a great extent, consonant with the custom observed in the Punjab during the government of the Sikhs.

17. The Judges of the Bombay High Court have held that Act XXVIII. of 1855 has not altered the rule of Hindu Law, that interest exceeding in amount the principal sum cannot be recovered at any\* one time (3, Bombay Reports, A. C., 23). On the other hand the Calcutta High Court (Kalica Prosound Misser *versus* Gobind Chander Sein and others, Small Cause Court Reference, 16th March 1865, p. 110, Sutherland's Edition) have ruled "that under the present law the court is bound to enforce the agreement between the parties as respects the amount of the interest to be paid upon a bond. The law under which a claim for accumulated interest was limited in amount to a sum not exceeding the principal has been rescinded by Act XXVIII. of 1855."

18. If, during the Sikh rule, when property was not secure, and the sale of the land or house of an agriculturist in satisfaction of a debt was unknown, the creditor was restricted to a certain limit for interest, it may be right that there should be a somewhat similar restriction, now that the security for the recovery of debts is so much better, whether regard be had to the character of the courts or the improved general position of the agricultural population. It is true that there was no law of limitation in Sikh rule, and that in this respect creditors are worse off now than they were then; but there can probably be no room for question that creditors are now in a position infinitely more secure as regards their debtors than they were before the introduction of British rule.

19. I recommend that enquiry be made from all Commissioners and Deputy Commissioners on the following points:—

- (1.) Whether the existing law in regard to interest causes undue hardship to debtors, and, if so, to debtors of what class? The reasons for the opinion expressed are to be assigned.
- (2.) Whether, owing to decrees for excessive interest, revenue-paying land has been sold by order of court in execution during the last five years? The extent of land and number of cases to be specified.
- (3.) The extent to which private alienations of revenue-paying land have been made during the past five years in satisfaction of debts other than decree of court?

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\* Thus the rule of Hindu Law is simply this—"that no greater arrear of interest can be recovered at any one time than what will amount to the principal sum; that if the principal remain outstanding, and the interest be paid in smaller sums than the amount of the principal money, there is no limit to the amount of interest which may be thus received from time to time." (1, *Bombay Report*, A. J., 49.)

- (4.) Whether such private alienations are attributable to the apprehended action of the courts in decreeing excessive interest ?
- (5.) What was the custom during Sikh rule in regard to interest ?
- (6.) Whether any alteration is desirable in the present law, if so, the nature of the alteration is to be specified.

No. 2271, dated 28th June 1872.

From—C. M. RIVAZ, Esquire, Officiating Under-Secretary to Government, Punjab,  
 To—The Officiating Registrar, Chief Court, Punjab.

IN reply to your No. 1593, dated the 15th Instant, I am directed to state that His Honor the Lieutenant-Governor fully recognizes the importance of the subject treated by Mr. Justice Melvill in his memorandum, a copy of which accompanied your letter, and approves that enquires be made on the points noted in paragraph 19 of the memorandum in the manner proposed by the Judges of the Chief Court.

Book Circular No. III-153, dated Lahore, 18th January 1873.

From—E. H. HARRISON, Esquire, Officiating Registrar, Chief Court, Punjab,  
 To—All Commissioners and Deputy Commissioners in the Punjab.

CHIEF COURT OF THE PUN-  
 JAB.

Present :

C. Boulnois, Esq.,  
 C. R. Lindsay, Esq.,  
 J. S. Campbell, Esq., } Judges.

THE Chief Court has reason to believe that in many of the courts of this Province, especially in those of the agricultural districts, decrees are frequently made by which interest upon debts incurred by peasant proprietors and cultivators is declared payable at exorbitant rates.

2. Cases in which the village money-lender sues his customer involve ordinarily small amounts, below Rs. 500, and therefore can scarcely ever come before the Chief Court in consequence of the provisions of Act XXIII. of 1861, Section 27, which declares that no special appeal shall lie in cases of the nature cognizable in Small Cause Courts.

3. The Chief Court has in fact had no opportunity of explaining in a judicial decision the general principles which govern this question, while in many parts of the country the subordinate courts, and especially the Small Cause Courts, have (as it appears from a recent inspection of records) decreed interest in a manner far too indiscriminate.

4. The Chief Court regards this with great regret, and considers that the law as it really stands requires some explanation for the guidance of judicial officers, in order that it may not be misunderstood to the detriment of debtors of the class above referred to.

5. The second section of Act XXVIII. of 1855 (*an Act for the repeal of the usury laws*) declares that "in any suit in which interest is recoverable the amount shall be adjudged or decreed by the court at

the rate, if any agreed upon, by the parties," and all due effect must doubtless be given to these words, taken in their plain and ordinary meaning, without any artificial construction being placed upon them for any purpose whatever.

6. The above legislative enactment was formerly enforced in many cases that arose in this Province subject to the qualification declared in paragraph IV., Section XIX. of the Principles of Law commonly called the Punjab Civil Code, which contained the following:—"The courts are not bound by any restrictions with regard to usury. Debtors and creditors are allowed to arrange the terms and conditions of interest in whatever manner they may deem most conducive to their mutual benefit; the courts will decree whatever rate may have been agreed upon *bond fide* between the parties. If no special rate shall have been agreed upon, then the court will fix what may appear an equitable amount with reference to the custom of the locality, the usage of trade, or the merits of the transaction. It will be remembered that the rates of interest vary for different classes and in different places."

\* \* \* \* \*

"The debtor need not be compelled by the court to pay the entire amount of interest if there be reason to believe that the bond was executed through fear or ignorance."

7. The compilation from which these words are taken has no force of law in itself, but the general law of contract is, equally with those words, against our courts considering themselves absolved from the responsibility of regarding the circumstances under which an engagement to pay exorbitant interest has been entered into; and omission by the courts to give due weight to such circumstances is likely to give rise to serious injustice and to such evils as are discussed in the minute on interest by Mr. Melvill, which has been recently circulated among judicial officers of the Province.

8. The Indian Contract Act of 1872, in Chapter II., gives the principles on which the law annexes an enforceable obligation to stated engagements requiring free consent; and in Sections 16 and 17 a general, and at the same time an equitable, rule is indicated where a person who holds a real or apparent authority over another, or in whom confidence is reposed by that other, obtains an advantage which, but for such confidence or authority, he would not have obtained. The law also points out the result where concealment of facts may have taken place, or acts fitted to deceive, or acts or omissions may have occurred in violation of what is regarded as the legal duty of the person obtaining a promise from another to explain facts "*likely to affect the willingness*" of that other to enter into a contract.

9. Reference may also be made to Section 6 of Act IV. of 1872 (The Punjab Laws Act), where it is declared that justice, equity, and good conscience shall be the rule of decision; and it may be safely affirmed that the equity governing this matter is to give their true and full effect to the words of the Indian Contract Act.



10. The repeal of the usury laws by Act XXVIII. of 1855, and the abolition of any force of law which the paragraph above quoted from the so-called Punjab Civil Code may have had before the passing of Act IV. of 1872, have left untouched the doctrines of equity both as to the protection of debtors who for any real reason are not fully competent to protect themselves, and as to the power of courts to relieve against what are called unconscionable bargains with such persons.

11. No doubt any one who contracts with another is entitled to assume, *prima facie*, that the latter is competent to look after his own interests, but no strict rule defines or can define where comparative incapacity ceases, and where extreme ignorance and helplessness call for the protection of the equitable rules prescribed by law.

12. No doubt also, as a general rule, the debtor is bound to go or send to his creditor and pay him. In many contracts, however, for the loan of grain for a particular sowing (which indeed may reasonably be for the return of grain after the harvest at a very high rate of interest) where the cultivator fails to make payment after the harvest, a distinction may clearly be taken. Neither party originally contemplates a rate of interest intended only for a particular period, running on from the time of the transaction indefinitely, and in such cases the real intention of the parties with due regard to the position of the cultivator must be considered.

13. The existence of undue influence may in many cases be inferred (according to the general rules of equity jurisprudence) from the extreme imprudence of the act done when coupled with other circumstances, and in this country the relations existing between the professional money-lender and indebted peasant are such that this rule should be borne in mind by our courts.

14. In no case should exorbitant interest be decreed in favor of a money-lender suing a peasant proprietor or cultivator, or any person similarly situated (where the right to recover it is disputed), unless the court trying the case is satisfied that the stated engagement on which the plaintiff seeks to recover has been entered into by the debtor with a knowledge of all the circumstances attending his position and his liability in regard to his creditor, and of his entire free will, without inequitable pressure of any kind. The courts may consider whether or not the contract was a prudent one, not with a view to setting it aside if imprudent, for that of course is entirely beside the court's duty, but with a view to determining whether extreme imprudence, from which, along with other circumstances, the existence of undue influence might be inferred, has or has not been manifested. Reference on this point may be made to the custom of the locality, the usage of parties similarly situated, and the rates for loans prevailing, so that the character of the transaction may be tested.

The debtor need not be compelled by the court to pay the entire amount of interest, whether agreed upon in cash or in grain, if there be reason to believe that the engagement, whether evidenced by bond, or by signing, or marking the money-lender's book, or completed in any

other mode, has been entered into through fear or ignorance; and if in any case the amount of interest shall appear to have been agreed upon under circumstances which would render the awarding it contrary to the principles above referred to, the court will only decree as much interest as may appear just under the circumstances.

15. In conclusion, the Chief Court repeats the injunction conveyed in Book Circular XXIX. of 1867, that in awarding interest subsequent to the date of the decree the courts should not allow it to approach in amount that which may be obtainable by persons who have not the security of a decree, and that no inducement should be afforded to decree-holders to allow their decrees to remain unexecuted. Further the courts are reminded that where a large portion of the amount decreed consists of interest, it is not compulsory on them to decree interest upon the amount decreed, inasmuch as the courts may fitly exercise the discretion allowed them by Act XXIII. of 1861, Section 10, and not award any such interest at all.

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No. 690, dated 6th April 1874.

From—E. H. HARRISON, Esquire, Registrar, Chief Court, Punjab,  
To—The Secretary to Government, Punjab.

IN reply to your No. 2271, dated 28th June 1872, on the subject of Mr. Melvill's minute on interest, I am now directed to forward copies of the opinions of the Judges recorded after full enquiry and report from districts in the Province.

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Note by Mr. Justice C. BOULNOIS, Judge, Chief Court, Punjab,—dated 13th March 1874.

I AM unable at present to write at length on the very difficult and important questions raised on this reference, and I think that the opinions collected should be laid before the Government without further delay.

I would, however, advocate the immediate abolition of imprisonment for debt. It is difficult to find any reason whatever for retaining it, and its introduction into this part of India can only have been in the absence of consideration of the circumstances.

The period of limitation is, I believe, so short as to cause debtors to be burdened with greater interest than they would have to pay if the law of limitation did not interfere, as it does, to compel often-repeated settlements of account. The question of the voluntary transfer of land is too wide to enter upon, but I think that sales of land in execution of decrees held by mahájuns for debts due by agriculturists should not be permitted.

Note by Mr. Justice C. R. LINDSAY, Judge, Chief Court, Punjab, on the Minute by Mr. Melvill on Interest in the Punjab, and the enquiry consequent thereon in accordance with letter No. 2271, dated 28th June 1872, from the Under-Secretary to the Government of the Punjab.

I HAVE read with care the greater part of the lengthy replies sent to the court by various officers in the Punjab on the subject of interest, and the effect of the action of the civil courts in the alienation of land.

There is, in my opinion, no sufficient ground set forth in those replies for the interference of the Legislature, and many strong reasons by Europeans and Natives are given for non-interference. It may be admitted that the agricultural class are to a very great extent in the hands of the village bankers: the fact is to be regretted; but I do not think that the re-enactment of the usury laws, abolished after much thought and discussion, would remedy the evil. Many Natives and Europeans ascribe the present state of indebtedness of the agricultural class, not to the law as it stands, but to the extravagant and unthrifty habits of the agriculturists, and to the want of care on the part of the courts of first instance in the investigation of the accounts between creditors and borrowers.

It is not, say they the high rate of interest originally demanded from the borrower, but the unscrupulous way in which the accounts are made up and interest charged, that ruins the borrower. The agriculturist at times must have money. Everything depends upon his having present available capital. He has no security to give. His land may not be sold, and his agricultural implements are protected from the grasp of his creditor. It stands to reason then, say the objectors to any change in the law, that a high rate of interest must be demanded. The banker is exposed to great risk, and he takes the risk for the interest which he may recover.

If a limit be set upon the rate of interest recoverable, the banker will, it is generally acknowledged, use his money in other ways than lending it to men who have no security to offer, and the result will be that in times of scarcity, when the Government demand is pressing, when oxen, seed, &c., are required at once, money will not be forthcoming, and the distress consequent thereon will be great. Moreover, it has been very clearly put by many natives well able to form a sound opinion that the evasion of the law of limitation as to interest would be universal; that creditors and borrowers would both evade it; and that in the rare instances where the borrower disclosed the evasive procedure, the necessary evidence in proof would not be forthcoming.

The accounts as to the custom of deducting a certain percentage from the sum to be lent, that is one anna on each rupee, the donation of produce of all kinds, and other presents to the creditor at stated times, the care taken by the borrower, without remuneration, of the creditor's cattle sent to him in order that they may have pasturage, are curious facts showing a peculiar state of society which no law will alter. It is also shown, and not without reason, that the very fact of the agriculturists having obtained a well-defined property in the soil after the

accession of English rule made the land-holders aware that they had the means,—the power,—of acquiring money to satisfy their love for show and for ceremonies, particularly marriage ceremonies, and that they have availed themselves largely in consequence.

In the Sikh times, it is stated, the land-holders were afraid to show the appearance of wealth, that in fact they had no wealth, the kardars taking all they possibly could obtain from them.

The general opinion as to the rate of interest taken in Sikh times is that the interest was never allowed to exceed the principal, and that the claims were quickly adjusted soon after or at each harvest, and that when the court interfered a percentage of the sum due, probably one-fourth, was appropriated by the court. It may be said that alienation of revenue-paying land by decree of court has not taken place in the Punjab, with rare exceptions, for the last five years and more; but private alienations have taken place to a considerable extent. There is a wide difference of opinion as to the cause of these alienations;—some say that the apprehended action of the courts is the cause; others deny this view. There is no good evidence upon which a really tenable conclusion can be formed; there is no evidence as to whether land alienated usually passes into the hands of creditors, or to the non-indebted or prosperous brotherhood. It is quite possible that the debtor, seeing the time has arrived when he can no longer borrow, does make up his mind to sell his land without the interference of the courts, for if taken to court he would be saddled with many expenses; but I much doubt whether the apprehended action of the courts in the matter of decreeing the full amount of interest claimed really affects the question. There is no evidence that the creditor takes less interest than he could legally recover in a court of law.

It is generally believed that the village banker is the only man who lends money at high rates of interest. Mr. Donald, Small Cause Court Judge at Hoshiárpur, shows that it is now very common for agriculturists to lend money to agriculturists on the same terms as the village banker does.

I append a statement showing suits between borrowers and lenders that have come before the Small Cause Court at Hoshiárpur during the current year up to the close of October, and a statement of alienations of land in 1872 by agriculturists to agriculturists and by agriculturists to bankers. It will be observed that bankers have acquired immovable property of less value than agriculturists, and that the number of transfers in favor of agriculturists is in excess of the transfers to agriculturists. The agriculturists, as creditors and suitors, it will be seen, are not far below the bankers in number, the ratio being 1,247 to 1,559.

What has happened and now happens in Hoshiárpur may be found true in other districts. There can be no doubt that many of the agriculturist class leave their land, go into service, amass money, and on return lend their savings at very high rates of interest to their brotherhood. It seems to me unreasonable to ask such persons to lend their

money to men who virtually have no tangible security to offer, whose land, agricultural implements, &c., are protected, at a low and a limited rate of interest. Money is but a commodity; its price, its value, changes according to circumstances. If there be money-lenders and much money, its price will fall; the more so if the security offered be good.

I cannot but think that if the Legislature interfere as to the rate of interest recoverable in a court of law, that the agriculturist in the long run will be the loser,—at any rate he will not gain.

There are so many ways of eluding a law limiting the rate of interest. This was found to be the case years ago, and I am unable to say that we are so much wiser in the present day, or the people so much more foolish than they were, that what was considered absolutely ineffectual by thoughtful men in those days would now be effectual—would now tend to the advantage of the very class who, so far from being benefited by the usury laws, were in fact placed at a disadvantage.

A number of officers and natives hold the opinion that the period of limitation for the realization of debts should be extended; that the present short period (3 years and 6 years) compels creditors to make up their accounts frequently, and thus the interest of each year is added to the principal, and the same rate of interest charged upon the aggregate. I would not alter the law of limitation. I think the very fact of the speedy settling of accounts may have the effect of making borrowers think seriously of their position; whereas if years roll on they forget that gradually their debt will weigh them down beyond the possibility of recovery.

It is very difficult to suggest a remedy for the present indebtedness of land-holders, as assuming it to be a fact that the majority are much distressed by debt, that will not raise a number of very reasonable objections.

Interference between men and men on the part of the Government is not usually desirable. Nevertheless, as the Government is the chief landlord, it seems to me that in that respect it may reasonably interfere through the district officers, and may aid by advances of money, secured by the hypothecation of land, those landlords whose maintenance is necessary. I am no advocate for the sale of land indiscriminately by order of court, but there are cases where there is no remedy, and the sale of the debtor's land must take place.

I do not see the policy of maintaining land-holders at any price. What is the use of supporting a thoroughly careless, extravagant landlord? Our policy should be to maintain those who strive to maintain themselves, to teach them, if possible, habits of thrift, and to point out to them the good results of careful habits, the evil result of extravagance; and this will never be effected by bolstering up every extravagant man simply because he owns land.

The English Government has given landlords a secure hold on a property in the soil which they had not in Sikh times, at any rate not to the same extent as now ; and with that security there is an attendant responsibility which they must learn to feel, if they do not now feel it.

Assuming that the revenue authorities have time enough, it seems to me that with our admirable system of record and registration, tahsildárs and district officers could, to a very great extent, collect information as to the actual state of indebtedness of the chief land-holders, the men it may be politic to maintain, and that, having obtained that information, it would be possible to arrange for the payment of their debts. I think, too, that land should be answerable for secured debts alone, that is where money has been borrowed on the security of land ; and in such cases I would compel by law the creditor to produce his accounts yearly, either to the registrar in whose office the deed is registered, or to the tahsildár. The debtor would thus be made aware of the accounts against him, and it would be brought home to him that the debt was rapidly increasing, and, if brought face to face with the creditor, he would then be able to put in his protest if the account appeared exorbitant and untrustworthy. This account should alone be accepted at any future time by a court of law.

Penalties for the non-protection of accounts in any one year, such as loss of interest, &c., might be declared. I also think that in cases where the Government deems it necessary or expedient to interfere when the landlord is daily becoming more and more in debt, it should be empowered by law to take the estate of the debtor into its own hands and deal with it as it pleases, by farm or otherwise, and so pay off the debt. I must admit that at first sight it may appear inexpedient for the Government to pry into the affairs of its subjects, but if it be true—and this appears to be the opinion of many persons—that the landlords of the Punjab are only big children, and must be protected (this is not my opinion), I see no valid reason why they should not be treated as children, as minors incapable of taking care of themselves and their property. The principle is in fact acknowledged in the case of the Nawáb of Murshedabád, for the liquidation of whose debts and the proper management of whose estates a law will shortly be passed.

I think some such arrangement as I have sketched might be elaborated into a workable system.

I also think that if our courts were to look more closely into the accounts between creditors and borrowers it would be well.

It is not incumbent upon the courts to decree exorbitant interest if they have reason to believe that any undue influence has been exercised on the part of the creditor upon the borrower, or if there be the slightest tinge of fraud or sharp-dealing in the manner of calculating the accounts ; nor is it necessary for the courts to give the rate of interest agreed upon by the borrower and creditor, if the debt be not paid at the stipulated period, and there be no agreement that such interest

shall be paid till the debt be liquidated. If legislation be necessary, I am of opinion that the Legislature should not interfere with the rate of interest.

Legislation should not go further than that which I have stated may perhaps be expedient by reason of the alleged incompetence of Punjab land-holders to look after their own interests, a fact which I very much doubt; and perhaps legislation might go so far as to enact that the interest recoverable at any one time shall not exceed the principal. This was the rule by Hindu law, and it may be that a return to that system would not be unfair to the creditor and would be advantageous to the borrower; for it would compel the creditor to press for payment, and the debtor necessarily would exert himself to pay off his debt. Further than what I have suggested the law should not interfere between creditor and borrower. These suggestions I urge solely on the ground that many men of alleged large experience think the land-holders of the Punjab should be nursed and taken care of in respect of their pecuniary obligations, and if their view be sound, I think land-holders in other parts of India are probably equally powerless in their struggle with their creditors; for, so far as my experience goes, I see no difference between the Punjabi land-holder and the land-holder in the North-Western Provinces, except that the former in many instances is of firmer character, and the *amor nummi* in him is more fully developed. I wish, however, to be distinctly understood that in my opinion any interference is inadvisable. The bania, the village banker, is not alone the beast of prey that he is made out to be; agriculturists, as Mr. Donald shows, are well able to lend out money at high rates of interest, and to calculate their accounts to the last farthing.

*Suits for Money in the Small Cause Court, Hoshiarpur, in 1873 to 31st October.*

1873. Month.	Agriculturists versus Agriculturists.	Agriculturists versus Others.	Bankers versus Agriculturists.	Other Cases.	TOTAL.
	Cases.	Cases.	Cases.	Cases.	Cases.
January ...	96	67	179	261	603
February ...	103	53	158	159	473
March ...	61	21	116	98	296
April ...	81	33	138	209	461
May ...	61	46	115	157	379
June ...	109	58	194	184	543
July ...	120	57	278	257	712
August ...	106	65	225	282	678
October ...	70	42	156	197	465
Total ...	807	440	1,559	1,804	4,610

*Transfer of Immovable Property in Hoshiarpur in 1872.*

AGRICULTURISTS TO SAHUKARS.			AGRICULTURISTS TO AGRICULTURISTS.		
Number of Documents appertaining to Land- ed Property.	Number of Docu- ments appertaining to House Property.	Value.	Number of Docu- ments appertaining to Land.	Number of Docu- ments appertaining to House Property.	Value.
218	117	Rs. A. P. 60,806 11 8	220	184	Rs. A. P. 78,508 8 6

Minute by Mr. Justice P. S. MELVILL, Officiating Judge, Chief Court, Punjab,—  
datde Lahore, 1st April 1874.

REPLIES having now been received to the questions suggested in my memorandum of the 11th June 1872, the substance of those replies is here noted:—

*1st question.*—“Whether the existing law in regard to interest causes undue hardship to debtors; and, if so, to debtors of what class?”

The almost unanimous reply is in the affirmative, and the class indicated is the agricultural class.

The general reasons assigned for the affirmative reply are the necessities of the revenue paying classes, their extravagance and ignorance, and helplessness when once they have fallen into the hands of the money-lenders.

To the *2nd question*,—*viz.*, “Whether, owing to decrees for excessive interest, revenue-paying land has been sold by order of court in execution during the last five years,”—the answer is generally in the negative. There are a few instances in which land is said to have been sold in the manner and for the cause indicated in the question; but these instances are so rare, and the amount of land sold is so small, that they do not affect the general conclusion.

The *3rd and 4th questions* are—“The extent to which private alienations of revenue-paying land have been made during the past five years in satisfaction of the debts other than decrees of court,” and “whether such private alienations are attributable to the apprehended action of the courts in decreeing excessive interest.”

The answer to these questions are very indefinite. For some districts the number of cases of transfer is given without specification of the area, and for some districts the return has been given only instead of five; so that it is impossible to specify the extent to which alienations



have been made. The present inquiry has not, therefore, resulted in the obtaining of reliable statistics. The causes of the alienations are not stated with any degree of certainty, but most of the replies point to the action of our courts in decreeing excessive interest and to the heavy costs involved in suits. It is clear, however, that very extensive alienations have occurred in different parts of the Punjab during the five years preceding 1872, and that they are chiefly owing to indebtedness and the extreme difficulty of escaping from it by any other method. Some of the most prominent instances are here noted :—

DISTRICT.	Alienations during last 5 years.	Cause assigned by Local Officers.
Ferozepore ...	About 1 part of 14 the revenue paying land.	Not the apprehended action of the courts, the alienations being made out of court after decree.
Gurdáspur ...	Sales 464 cases; mortgages 2,612 cases.	Heavy expenses of law suits.
Jhang ...	37,565 acres ...	Pressure of debts and action of courts.
Pesháwar ...	12,000 acres ...	Interest and costs.
Mooltan ...	74,697 acres ...	Action of courts in decreeing excessive interest.
Jhelum ...	2,104 cases ..	To avoid annoyance, expense, and indignity of suits.
Kángra ...	6,553 acres sold; 34,251 acres mortgaged.	Action of the courts in decreeing excessive interest.
Ráwalpindi ...	27,435 acres ...	Ditto Ditto.
Jullundur ...	46,850 acres sold; 31,895 acres mortgaged.	Not the apprehended action of the courts.
Gujránwála ...	20,788 ghumaos sold. 24,760 ghumaos mortgaged.	Interest low. (The ghumaos may be roundly stated as being equivalent to an acre).
Hoohiárpur ...	6,909 acres sold; 85,290 acres mortgaged.	About 12 per cent., the total málguzar (revenue-paying) area of the district. Not the apprehended action of the courts.

The 5th question is—" What was the custom during Sikh rule in regard to interest ? "

No general custom applicable to all parts of the Punjab is shown to have existed, but the replies show that a very common custom in most parts of the country was that not more than 50 per cent. on the principal in cash loans and 100 per cent. in loans of produce was demandable by way of interest.

The 6th question is—Whether any, and what, alteration is desirable in the present law of interest ? A large majority of officers recommend an alteration in the present law, their opinions generally tending to the fixation of a maximum rate of interest that may be decreed by courts, more

particularly in cases where the debtors are agriculturists, and to giving the courtst he power of making an equitable adjudication of interest, notwithstanding any agreement made by the parties. Some of the most thoughtful reports, however, are against any alteration in the existing law.

2. These reports and statistics of civil litigation prove that the agricultural population of the greater part of the Punjab is very extensively indebted to the money-lenders. The class of money-lenders has increased largely during British rule, and in addition to the petty banker, who borrows his capital from the old-established bankers, we have the land-owners not uncommonly taking to lending money on the same terms and with the like avidity as the professional lender.

3. The cause of this indebtedness is to be found—*1stly*, in the extravagance of the borrowers; *2ndly*, in the rapacity and unscrupulousness of the lenders, more especially those whose profession it is to lend.

The extravagance of the agriculturists is evidenced in marriage and other social rites and in a comparatively reckless way of living. They found themselves a few years after the introduction of British rule in the possession of landed property which heretofore had been of no appreciable market value, but which now enabled them to raise money at pleasure, and they have too commonly used their new-born credit without reflection, borrowing more money than was fairly needed for the occasion, and squandering the excess in superfluities of living. That the prudent revenue-payer is compelled occasionally to resort to a loan is undeniable. A bad season, death of cattle, or a marriage in the family, necessitate the contraction of a loan to enable him to pay the Government demand, to plough his land, or to perform a domestic duty which may not be postponed; but there has been a common disregard of caution in incurring these necessary loans, and there has been also a want of care in devoting the profits in good years to the redemption of debts.

4. The efforts of the money-lenders as a class are now commonly turned to involving the land-owners in such a burden of debt that its liquidation is only possible by the transfer of his land to themselves. They are, as a general rule, rapacious and unscrupulous; the sum lent is reduced by preliminary reductions, payments by the debtor are either not credited at all, or are credited at less than their value, and exorbitant interest is rapidly piled on interest. The dealings of the money-lending class in the more populous parts of the Punjab may not inappropriately be designated as a system of open plunder; the lenders and the borrowers do not stand on an equal footing; and, as a rule, there is an absence of that free consent on the part of the borrower which is needed to constitute a valid contract. The money-lender has superior intelligence, and he takes an unconscionable advantage of the necessity, ignorance, and carelessness of the borrowing agriculturists. It must be recollected that in the Punjab the mass of the agricultural population is composed of small peasant proprietors, and that there are but few large landed proprietors.

In these remarks I am alluding chiefly to the peasant proprietors.

5. On the other hand it cannot be denied that the Punjab agriculturist is shrewd, and that he has now learnt to deny even just claims and to invent all kinds of false pleas when brought into court for a debt.

6. A very general opinion is expressed by the officers who have written on this subject, that the main remedy for the existing state of things is to be found in the better education of the agricultural class. I confess that I have but little faith in this. The agriculturist ceases to follow the plough when he has undergone anything but the most rudimentary learning. In fact, he becomes physically incapacitated from doing so if subject to tuition for any length of time. The daily attendance in a room for many hours incapacitates him from enduring the heat of the sun and the hard labor necessary for farming operation, and the hand inured only to the pen becomes unfitted for the plough. It is a well-known fact that the village boy who has undergone a course of Persian, Geography and Arithmetic, disdains the farrow, and leaves his land to the care of a tenant. I believe that it is not desirable to teach the labouring agriculturist of the Punjab anything beyond simple writing and reading. Could even this amount of education be imparted to the rising generation a great step would have been gained in putting the agriculturist in a position to hold his own against the banker; but unless attendance at the school up to a certain age is made by law compulsory it is much to be doubted whether the people will send their sons for instruction. Compulsory education involves a great deal of interference by subordinate Government officials, and the preparation of registers of births, deaths and marriages, and it would probably not be expedient to introduce such a measure at present.

There will occasionally be found men who desire to raise themselves above the herds, and every facility should be given to them to obtain a superior education; and this can be obtained by resorting to the higher class schools. But for the agricultural population generally I do not think that the education provided by the Government can be too elementary. If the existing state of agricultural indebtedness calls for a remedy, it must rather be looked for in a measure which shall restrict the credit of the land-holders rather than in any rapid improvement of their education.

7. There are still large numbers of the agriculturists who have not become indebted, but it is to be apprehended that these numbers will year by year diminish. There is a strong spirit of emulation abroad in regard to expenditure on social matters; the style of living of all classes is improving; and a general tendency is shewn on the part of the agriculturists to be drawn into the vortex of extravagance.

8. The Government is the superior landlord, and, as the recipient of a share of the rent of the land is directly interested in the welfare of those who are the recorded owners of the proprietary right in land. The Government can hardly be regarded as acting wisely in standing by with folded arms while these people are undergoing a gradual, but

no less certain, process of extinction. Although there are no complete or reliable statistics to show how far the ancient land-owner has been evicted by the sahuakar, I am convinced from my own experience that very extensive transfers of this kind have already taken place, and are now daily taking place, in some of the richest districts in the Punjab, the most prominent instances of which are the Hoshiárpur and Jullundur districts. It may be said that the capitalist whose hereditary occupation is that of banking will lay out money on the improvement of the land, and in some cases this may be true; but hitherto his aim has too generally been to squeeze as much out of the tillers of the ground as he can, and he does not spend money on the land. His first step is commonly to oust the proprietor from the cultivation. Whether he obtained the land by sale or mortgage, the condition of the transfer is that he shall be put in possession of the cultivating as well as of the proprietary right, or, if this condition of the transfer of the right of cultivation has not been expressly provided, and the courts in consequence refuse to put him in possession of the cultivation, he will take care to see that no doubt is left on this point in future deeds to which he is a party. The result of the present condition of the two parties is that the hereditary banker, the bannia, sahuakár, evicts the cultivating proprietor from his land, and that the latter, driven from house and home, becomes a disaffected and disloyal subject. Let but this process go on for another fifty years, and the Government may find itself face to face with a serious political danger.

9. I therefore submit that it is the part of Government to provide a remedy for the evil before it is too late.

10. In my memorandum of the 11th June 1872, I did not intend to suggest any alteration of the law so as to affect the transactions of borrowers and lenders out of court. The whole object of what I wrote was in relation to the action of the courts in decreeing interest. Since that time the Book Circular of the Chief Court, No. 3 of 1873, has been issued. This circular meets to a very great extent the evil which it was my wish to remedy, and I am of opinion that it would now be sufficient, so far as the action of the courts is concerned, were it to be further enjoined that the equitable principle laid down in the circular should be applied in going behind the terms of a bond so as to unravel the real nature of the transaction and ascertain the principal amount with a view to the adjudication of such a sum by way of interest as might seem equitable in cases where, owing to the absence of free consent, the elements of a perfectly enforceable contract were wanting.

On a careful consideration of this subject I am not prepared to recommend any alteration in the law of interest where the rate of interest has been agreed upon by the parties concerned.

11. But there are two measures which seem to be necessary. The first is, that the law of limitation should be altered, and the second, that the credit of the owners of land in the Punjab should be restricted,

12. The history of the law of limitation in the Punjab is as follows:—

In the rules issued by the Governor-General for the administration of civil justice in the Punjab issued in 1849 the period for the recovery of debts on bonds or accounts was twelve years; in 1856\* the limit was reduced to six years; in 1859† the limit of six years was retained for debt on bond below Rs. 50 and on registered bonds for and above Rs. 50, but it was reduced to three years for debt based on unregistered bonds above Rs. 50 and on accounts; in 1867 Act XIV. of 1859 was introduced, and this has been followed by Act IX. of 1871, which is now in force, and by both these laws the limit for suits on registered bonds is six years, and for suits on unregistered bonds and accounts it is three years.

13. When the change was made in 1859 from the limitation of six years to three years for debts on account or unregistered bonds there was much apprehension created in the minds of the bankers. I recollect that this apprehension was often expressed to me, and when I have alluded to the subject of late years I have generally found both the banking and agricultural classes opposed to the shorter term of limitation. It may be agreed that a short period for the adjustment of accounts works to the advantage of the agriculturist, who is thus able to recollect and prove the transactions in which he has been engaged, and that a longer period would result in his finding himself involved in a hopeless well of difficulty; but although there is truth in this position, it is also true that three years is frequently an insufficient term to allow of a debt being paid off. The margin of profit left to a peasant proprietor, whose holding is ordinarily small, is narrow, and, supposing that he has recourse to a loan in a time of difficulty, such as the failure of the harvest or death of cattle, it all depends on the two next years being plentiful whether he is able to pay off the loan or not. If these fail, the creditor is compelled by the law of limitation to take a fresh bond including the interest due on the first loan, and then the difficulties of the borrower become serious. Were a period of six years allowed for unregistered, and of twelve years for registered, loans, I believe that the difficulties of the borrower would be materially lessened. I believe that the knowledge on the part of the lender that he would have a fair time within which to realize his dues would tend to reduce the rate of interest, and that the honest borrower would be able to repay the debt which now he often cannot do. An alteration of this kind in the law of limitation would be hailed as a great boon by both bankers and agriculturists. A very considerable reduction in the amount of litigation might be expected to result from this change.

14. The most important point, however, is to curtail the credit of the land-owners, and this can only be done by placing restrictions on the voluntary transfer of the proprietary right in land. Sales of ancestral land by order of court are practically unknown in consequence of the

Chief Court refusing to sanction them, and therefore the restriction required must be placed on so-called voluntary transfer. The restriction might be that no transfer of the proprietorship of land by private sale should be permitted in payment of a debt to a creditor, whether alien or of the brotherhood, and that mortgages should only be allowed for the lifetime of the mortgagor to a creditor; that no sale or mortgage for a term beyond the life of the mortgagor to parties other than creditor should be allowed without the sanction of the Deputy Commissioner and Commissioner; and that that sanction should not be granted if the transaction is in any way connected with the payment of a debt. By such provisions the mere money-lender would be prevented from getting land otherwise than by fair purchase in the open market; while the legitimate transfer of land by parties not indebted would be practically free.

15. The result of such a course might perhaps be a depreciation in the value of land, but probably not to any serious extent. What is wanted in the Punjab is to prevent the hereditary owners of land from being evicted by the pressure of debt, and if this end is attained a slight depreciation in the market value of land is not of much consequence.

16. The question then arises whether the agriculturists would find the money-lenders willing to advance loans for necessary purposes under these conditions. The fact is that the great body of the lenders are dependent on the agriculturists for their business, and there seems no reason to believe that they would hesitate to continue their dealings with them, though they would take care only to advance such amounts as there was a fair prospect of recovering. They would not lend in a reckless way, as they now do, in order to hopelessly involve the debtor with a view to eventually getting his land. They would find themselves very much in the same position as in the Sikh time. Nor do I think that the rate of interest would increase. The banking class is the most valuable section of the community, and is entitled to a fair consideration of its interests. The object in what I suggest is to prevent the unfair use of their opportunities.

17. It is a question whether the Government should not, in the event of the above suggestions being approved, set on foot a scheme for redeeming outstanding mortgages held by alien money-lenders with a view to the reinstatement of the mortgagors in their land. As, however, the measures which I have suggested are radical and open to many opposing considerations, and the subject is one on which great differences of opinion exist, I would recommend, in the event of the Government not being prepared to take any immediate decisive action, that statistics should be collected each year shewing as far as possible the state of indebtedness of the agricultural population and full details of the alienations of land.

18. It would be a good thing if imprisonment for debt were abolished. It but rarely happens that agriculturists are imprisoned on this account, but it seems advisable to remove an engine that may be used for pressing and ruining those who are engaged in husbandry.

19. It is very desirable that some change should be made in the Civil Procedure Code in regard to the attachment and sale of crops in execution of decrees for money. At present the standing crop is not unfrequently attached, a watcher is appointed at the cost of the debtor, and when the grain has been harvested the whole is sold by auction, and the proceeds, after deducting the amount due as Government revenue, are made over to the judgment-creditor. Now, it may sometimes be necessary to attach a standing crop to prevent its being suddenly reaped and made away with, but the attachment should never be made until the crop is about to ripen; and in regard to the appropriation of the yield it would appear to be in consonance no less with equity than the spirit of the Code to provide that the creditor should only receive that portion of the net produce which remains after paying the Government revenue, or, in other words, that the creditor should get only the proprietor's profit. It would follow from this proposition that the produce of a non-proprietary cultivator could not be touched in execution of a decree for money.

To allow a judgment-creditor to appropriate the whole of the produce that remains after satisfying the Government demands is palpably unjust; for not only is the cultivator thereby deprived of the means of supporting himself and his family, but he is incapacitated from cultivating the land in future without incurring fresh liabilities.

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No. 1643, dated 2nd July 1874.

From—E. H. HARRISON, Esquire, Officiating Registrar, Chief Court, Punjab,  
To—The Officiating Secretary to Government, Punjab.

IN continuation of Chief Court letter, No. 690, dated 6th April 1874, forwarding report on the questions raised by Mr. Justice Melvill's minutes on "Interest," I am directed to forward copies of notes of Mr. Justice Boulnois and Mr. Justice Thornton on the subject of usufructuary mortgages.

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Note by Mr. Justice T. H. THORNTON, Officiating Judge, Chief Court, Punjab,—dated 24th June 1874.

IN the case of *Narain Dáss versus Daya Rám*, it has been held by a majority of the Chief Court that where a mortgagor agrees to give the mortgage usufructuary possession of his *khud-kasht* lands, it is not to be presumed, in the absence of express stipulation, that the mortgagor reserves to himself the right of cultivation of those lands.

2. I concurred in that judgment, because I could find no authority in law or custom for such a presumption, and considered that it was beyond the legitimate power of the Chief Court to create a presumption of law which would have the effect of materially varying the natural meaning of a written contract.

3. But, though satisfied that the judgment of the majority of the Chief Court is correct, I am not the less sensible that the manner in which and the extent to which the members of the money-lending class are obtaining possession of the lands of agriculturists are matters requiring attention ; and the particular form of mortgage which seems to require most attention is the form of mortgage employed in the case of Narain Dáss *versus* Daya Rám, in which the mortgagee is placed in usufructuary possession of the lands on the agreement that the profits of the land are to be considered equivalent to interest of the debt only, so that until the mortgagor can pay off the principal he remains dispossessed ; and, as is generally, by the very fact that his lands are mortgaged, deprived of all means of repaying the principal, he may be considered dispossessed *sine die*, while after the lapse of 60 years the mortgagee will become actual proprietor by the operation of the law of limitation.

4. I am not aware of the extent to which this virtual alienation of lands to money-lenders is being enforced by the courts, but if the cases are numerous it seems to me that it is as necessary that some check should be placed on these transfers, as it has been found to be in the case of the *sale* of lands in execution.

5. I suggest, therefore, that statistics be called for from every district in the Province shewing the number of cases in which mortgagees have been placed in usufructuary possession of mortgagor's lands by decree of court for the last five years, distinguishing cases in which the profits of the land are to be taken in lieu of interest only from those in which the principal as well as the interest is to be repaid out of the profits, and also the number of cases in which the mortgages have been redeemed.

6. Should the statistics so collected shew that the extent to which this kind of alienation is going on is serious, a recommendation might be submitted to Government to the effect that the Legislature should be moved to confer on the Chief Court the same power in reference to decrees for usufructuary possession of lands by mortgagees as it possesses in reference to sale of lands in execution.

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Note by Mr. Justice C. BOULNOIS, Judge, Chief Court, Punjab,—dated 29th June 1874.

It seems that the most ancient and most ordinary form of mortgage known in the Punjab,—the pure usufructuary mortgage,—affords great and undue facilities to the mortgagee for obtaining the proprietary right in the mortgaged lands.

2. To prevent transfers of village lands upon sale in execution of decree without a check being imposed thereon, reference is required for the sanction of more than one Government official, and inquiry is made into the circumstances of the parties before any such sanction is given with a view to exhausting every means of preventing the transfer.



3. But the pure usufructuary mortgage affords ground for the obtaining *dakil kharij* by the mortgagee on the mere agreement of the malguzar who mortgages.

4. It struck me in the case of *Narain Dás versus Daya Rám*, and in others recently decided in the Chief Court, that no sufficient distinction was drawn in decrees made in favor of the mortgagee between the right of immediate possession with full control over the land which the usufructuary mortgagee takes (in the absence of any stipulation to the contrary) and the proprietary right which, though it passes temporarily to the mortgagee, is not altogether lost by the mortgagor, the mortgage remaining redeemable for 60 years.

5. Again, the rules relating to foreclosure and the year of grace (Regulation XVII. of 1806) protect the mortgagor by way of conditional sale, and he is entitled to an account; but no such rules protect the mortgagee by way of pure usufructuary mortgage.

6. In the case above referred to I was unable to adopt the view that where a mortgage of this land has been made it is to be presumed (in the absence of express contract to the contrary) that the mortgagor reserves to himself the right of the hereditary cultivation in the mortgaged lands, such a right being supposed to be inherent in the proprietary right.

7. But I shall be glad if by any limitation upon the right to effect *dakil kharij*, or in any other mode, the interests of the mortgagor by usufructuary mortgage can be better protected than they are at present; and certainly I think it would be a good thing that enquiry should be made as to the number and practical effect of these mortgages as regards the transfer of the proprietary right, although the matter rather concerns the general administration of the country than the judicial department.

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No. 3109, dated Lahore, 22nd August 1874.

From—C. M. Rivaz, Esquire, Officiating Secretary to Government, Punjab,

To—The Officiating Registrar, Chief Court, Punjab.

WITH reference to your letter No. 1643, dated 2nd July, forwarding copies of notes on the subject of usufructuary mortgages, I am desired to state that the Honorable the Lieutenant-Governor approves the proposal in the 3rd paragraph of Mr. Justice Thornton's note, and suggests that, in calling for the statistics, a form be circulated to ensure uniformity.

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Extract, paragraphs 194 and 150, from Annual Report on the Revenue Administration of the Punjab for 1873-74.

*Transfers of Land.*—The extent to which revenue-paying land is changing hands under British rule and the conditions of its transfer are subjects fraught with great interest and importance. They are

Statement No. 27A.,  
(Imperial Return I. E. 5)  
and XXXV.

generally held to involve grave considerations. The displacement of a considerable portion of the old agricultural proprietors by the class of money-lenders has been thought to demand legislative interference, both on economical and political grounds.

The state of indebtedness which gives rise to the necessity for these transfers, is caused not, as in former times in other provinces, by the pressure of the Government demand, nor does it prevail amongst the whole agricultural community. A small minority,—probably not a larger proportion of the whole number than might be expected to be improvident, seeing the greatly enhanced value of the land, in which for the first time in the history of the country they have a valuable property,—launch into extravagant habits of living and so become involved in debt.

Now, admitting that a certain amount of discontent is necessarily engendered in the minds of those who find an ancient privilege slipping out of their hands, it is useless to attempt to stop by legislation the result of the causes which our own method of government has set at work. The result of British rule has been, and ever will be, to throw the people more on their own resources and make them feel responsible for their own actions. The prosperity of improvident land-owners cannot be forced upon them in spite of their improvident habits, and if the powerful machinery of the State is employed to prevent the voluntary transfer of land, and thus to prevent the natural effect of such habits from making itself felt, the result can only be depreciation in the value of the land itself, and deterioration of its productive power. It may be granted that if the displacement of the agricultural classes were due to the intricacy of our legal or administrative system, by which advantage might be taken by those more competent to avail themselves of it than the simple races whose status is being lost, there might be ground for such alterations as would bring its provisions within the scope of the intelligence of the latter. But is this the case? Is the system of our law of debt so complex as to be beyond the apprehension of the least educated? Are lands parted with below their market value? Do cases occur in which industrious zamindars, for no fault of their own, are involved in suits for exorbitant demands and compelled to part with their lands? So far as these questions can be answered in the negative, will it be apparent that legislative remedy will not only be inoperative, but will further promote habits of inactivity and extravagance.

The answer to the first of the above questions belongs more properly to the judicial branch of the administration; but from the opinions generally advanced on the subject by those most desirous of interfering with the existing state of things, it may be concluded that it is not in the mode of administering justice that any change can be introduced to protect the agriculturists.

Sales of land in execution of decrees of the civil court are allowed only in very special cases, and when  
 Lands sold and mortgaged. land is so sold the right of occupancy as a cultivator is reserved by law to the ex-proprietor. The second question as to the price for which lands are alienated will be best answered

by the following table, showing for the last six years the amount of land sold and mortgaged and average value realized upon it:—

YEARS.	AREA IN ACRES OF LAND.		AVERAGE JAMA PER ACRE OF LAND.		No. OF YEARS' PURCHASE OF LANI		AVERAGE AMOUNT AGREED ON PER ACRE.	
	Sold.	Mortgaged.	Sold.	Mortgaged.	Sold.	Mortgaged.	Sold.	Mortgaged.
			Rs. A. P.	Rs. A. P.			Rs.	Rs.
1868-69	71,235	129,653	0 10 10	0 13 9	18	13	12	11
1869-70	103,787	144,460	0 7 10	0 12 6	20	15	10	12
1870-71	67,673	138,674	0 10 5	0 15 7	23	14	15	14
1871-72	91,395	174,298	0 10 8	0 15 8	21	14	14	14
1872-73	86,638	195,277	0 10 7	0 13 11	23½	16	16	14
1873-74	93,645	185,863	0 10 2	0 12 3	23½	18	14	14

Several interesting facts are brought to light by this statement:—

1. That the area sold is not increasing in any startling proportion :
2. That the agriculturists succeed in retaining a lien on the more valuable lands which they alienate :
3. That the amount realized by sales and mortgages is steadily progressing, reaching, in the case of the former, 28½ years' purchase of the Government demand for 1873-74.

The following table shows that the interest at 12 per cent. on the amount agreed on for sales and mortgages in every case exceeds largely the annual Government demand:—

	INTEREST AT 12 PER CENT ON THE AMOUNT AGREED ON FOR		ANNUAL GOVERNMENT DEMAND ON LAND.	
	Sales.	Mortgages.	Sold.	Mortgaged.
	Rs.	Rs.	Rs.	Rs.
1868-69 ... ..	1,09,073	1,74,535	45,710	1,14,923
1869-70 ... ..	1,24,749	2,00,391	50,896	1,12,624
1870-71 ... ..	1,29,691	2,34,261	44,241	1,35,229
1871-72 ... ..	1,56,542	2,99,812	60,685	1,70,885
1872-73 ... ..	1,61,194	3,36,531	57,262	1,69,902
1873-74 ... ..	1,58,334	3,11,519	58,642	1,43,024

The excess has, therefore, continuously increased in the last six years. When it is apparent that the amount paid for sales or mortgages exceeds by so large an amount the interest obtainable thereon at

the current native rate of 12 per cent., it may be safely asserted that pressure of the Government demand is not the cause of these transfers.

These facts, it is maintained, do not constitute any grounds for serious apprehension; on the contrary it appears from them that a natural and healthy process is going on;—land is increasing in value; almost every year the disinclination to part with valuable land is able to assert itself; and the facility of raising loans on mortgage is increasing. Is it necessary or desirable to introduce a disturbing element in this self-adjusting process, one of the first effects of which would probably be the sensible depreciation in the market value of land? The system of protection has been tried in other countries with the result, not of preventing loans, but of depreciating the security and increasing the rate of interest.

The last question, whether agriculturists are involved in suits for exorbitant demands, involves a much wider question than the mere transfer of land, and any measures framed specially to protect agriculturists would necessarily be partial. It is affected by the law of limitation, of registration, and of interest, and is beyond the scope of a revenue report. But here again it may safely be affirmed that any legislation designed to protect one class to the exclusion of others will react upon the very persons whom it is intended to favor, by raising the interest on loans raised for improving the land, by destroying their self-reliance, and removing the incentives to self-denial and industry, lessons which are being gradually learnt, and by means of which alone the agriculturists of India will keep pace with their fellow subjects in success and prosperity.

The returns of sale or transfer by order of court clearly include, in many cases, mere decrees for land; whereas it is intended that only sales or transfers in execution of decrees for money should be shown. The number of such cases shown in the statement is 433, but in the Report of Civil Justice it is stated that only one sale in execution has been sanctioned, while there were 188 cases of temporary alienation in satisfaction of decree.

The imperial return on transfers is arranged according to the nature of the holding transferred, and, as has been previously pointed out, its minute classification renders it liable to inaccuracy; transfers by gift are included, which swell the number of voluntary transfers to 12,458; mortgages are excluded, and the value of land sold is not given: so the local return is more valuable.

The sales of land are largest in the following districts:—

	No. of Acres.	Price per Acre.		
		Ra.	A.	P.
Sirsa ...	22,731	0	13	0
Lahore ...	4,466	30	0	0
Gujránwála ...	4,446	15	0	0
Montgomery ...	4,234	3	0	0
Dera Ismail Kłan	6,202	5	0	0
Dera Gházi Khan	3,764	14	0	0

The sales in Sirsa rose more than 50 per cent., but the average price of land rose from 10 annas to 13 annas, which is higher than has yet been shown in any returns for this district. The area mortgaged diminished considerably. The large increase in sales of land in Dera Ismail Khan is reported to be nominal, as the people have taken the opportunity, afforded by the settlement, of registering mutations of past years.

Land fetched the highest price in—

				Per Acre.
				Rs.
Hoshiárpur	...	...	...	70
Jullundur	...	...	...	62
Kohát	...	...	...	52
Ludhiána	...	...	...	40

The average amount realised by mortgage was highest in—

				Rs.
Hazára	...	...	...	73
Hoshiárpur	...	...	...	49
Jullundur	...	...	...	33
Pesháwar	...	...	...	33

Simla being an exceptional district, is not included in the above.

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Extract from Report on the Revenue Administration of the Punjab for 1874-75.

*Transfers.*—The imperial statement of transfers of land (XXVII A.) is, as noticed in the Report of 1873-74, of so complicated a nature that the transfers recorded in it cannot be relied on for correctness in all the details of the nature of the tenures affected.

Transfers of land, sales and mortgages. Statements XXVII A. (Imperial I. E. 5). XXXV, XXXV A., and XXXV B.

The most noticeable feature in the return is the smallness of the average area affected. The shares in great zamíndáris, shown as having been sold in the Hissar districts, are of no great extent, and the case has not even attracted the notice of the Deputy Commissioner.

The cases in which villages owned by cultivating communities have changed hands average but 36 acres, and the shares in such villages 28 acres only. The average area of land affected is as follows, viz. :—

		Acres.
Average area of land sold	...	13.3
Ditto mortgaged	...	12.3
Ditto redeemed	...	12.3

The area of land sold in 1874-75 was 79,750 acres, and that of land mortgaged 180,110 acres. In 1873-74 the area of land sold was 92,645 acres, and that of land mortgaged 185,863 acres.

The ratio borne to the transactions of previous years will be seen from the annexed figures, showing the lowest and highest areas affected, and also the average amount transferred :—

	1869-70.	1870-71.	Average for six years.
Area of land sold in acres ...	103,787	67,763	85,728 8
	1868-69.	1872-73.	
Area of land mortgaged ...	129,653	195,277	163,370

The average rates obtained for both sale and mortgage have risen in a marked manner during the year under report. The average price for land sold, for the past six years, has been Rs. 15·1 per acre. In the present year the average rates have risen to Rs. 19 per acre on sale, and Rs. 16 on mortgage. In 1873-74 the rates were but Rs. 14 per acre in both sale and mortgage cases. The prices obtained for land sold voluntarily is higher than that obtained for land compulsorily sold, and the general average is, therefore, in some degree lessened. It is interesting to compare the price for land in these returns with that shown as paid by Government for land required for public purposes, which also includes all descriptions of soil. The average rate paid for land required for public purposes was Rs. 29·2 per acre; the average rate for land sold voluntarily, Rs. 22·5 per acre. The prices paid by agriculturists and non-agriculturists are for the whole Province the same, but this result is in some measure owing to the high rate paid by non-agriculturists for land in Pesháwar. An opinion is expressed by more than one officer that the rate paid by agriculturists expresses the true market value of the land.

The amount of land purchased by agriculturists is a satisfactory feature in the return, as it shows that some, at all events, of the agricultural community are able to lay by money, and that land is considered a good investment by those most closely connected with it. Some allowance must, however, probably be made for the difficulty of distinguishing with precision between the two classes of agriculturist and non-agriculturist. An individual of the latter class may occasionally be reckoned as an agriculturist; the converse is almost impossible. Any errors on this score are, however, in all probability of small amount.

The percentage, as shown in the return of sales of land sold to agriculturists and non-agriculturists respectively, is as follows:—

	No. of Cases.	Area of Land acquired.
		Acres.
Agriculturists ...	65 per cent.	54
Non-agriculturists ...	35 do.	45

The largest number of sales occurred in Ráwalpindi and Kángra; in the former there were no less than 646 cases. A large number of sales took place also in Bannu, Dera Ismail Khan, and Jhelum.

The sales shown in Dera Ismail Khan probably represent to some extent the transactions of former years now brought on the register.

The largest number of cases of mortgage took place in the districts of Umballa, Hoshiárpur, Siálkot, and Gujránwála.

The number of cases in which mortgages have been redeemed during the year is 2,885, affecting 35,712 acres. This represents 19·8 per cent. of the area mortgaged during the year. The largest number of redemptions occurred in the divisions of Ráwalpindi, Amritsar, and Jullundur.

Many of these cases must, however, no doubt, be understood to involve transfer of the land by sale to the former mortgagee at the time of redemption.

A new return has this year been prepared showing the number and amount of existing mortgages in the Province at the end of the year 1873-74. This statement, read with that which shows the land newly mortgaged during the year 1874-75, and the land redeemed during the year, shows the amount of land in mortgage at the close of 1874-75.

The results will be best appreciated by showing the proportions of the encumbered to the unencumbered land. The result obtained by comparing the area mortgaged with the area shewn in Statement XXV. of 1873-74, excluding Government property, is as follows:—

DIVISION.	AREA.		Per-centage.
	Of Land mortgaged	Of Division.	
Transfers.			
Delhi ...	142 square miles.	5,609	2·5
Hissar ...	128 " "	8,472	1·5
Umballa ...	255 " "	4,007	6·3
Jullundur ...	249 " "	5,886	5·1
Amritsar ...	252 " "	5,335	4·6
Lahore ...	190 " "	8,961	2·1
Ráwalpindi ...	202 " "	16,857	1·2
Mooltan ...	430 " "	20,156	2·1
Deraját ...	52 " "	15,007	0·3
Pesháwar ...	148 " "	8,171	1·8

The result may be considered as incorrect, on the hypothesis that none but land already under cultivation is mortgaged. This is probably not borne out by facts, but the results on such an hypothesis are shown below, those divisions being taken which are generally understood to be most heavily burdened:—

DIVISION.				Area mortgaged.	Cultivated Area.	Per-centage.
Mooltan	...	...	...	430	2,674	15.6
Umballa	...	...	...	255	2,633	9.6
Jullundur	...	...	...	249	3,184	7.5

If the same data be taken for the districts of the Mooltan division, the results are as follows:—

DISTRICTS.				Area mortgaged, in Square Miles.	Cultivated Area.	Per-centage.
Mooltan	...	...	...	244	976	25.0
Montgomery	...	...	...	89	658	13.3
Jhang	...	...	...	93	413	22.5
Muzaffargarh	...	...	...	2	627	0.3

The return from Muzaffargarh is possibly incorrect, but it appears that in the most heavily indebted districts 75 per cent. of the cultivated area is free from encumbrance.

A more correct estimate will be that derived by comparison of the revenue assessed on the lands mortgaged with the revenue of the whole district, viz.:—

DIVISION.				Revenue of Land mortgaged.	Revenue demand.	Per-centage.
				Rs.	Rs.	
Delhi	...	...	...	1,11,512	26,39,501	4.2
Hissar	...	...	...	28,964	14,86,363	1.9
Umballa	...	...	...	1,76,111	15,47,694	11.3
Jullundur	...	...	...	2,76,054	31,08,397	8.8
Amritsar	...	...	...	2,44,063	23,97,510	8.4
Lahore	...	...	...	83,281	14,90,807	5.5
Rawalpindi	...	...	...	84,029	22,23,745	3.3
Derajat	...	...	...	11,319	11,02,037	1.2
Peshawar	...	...	...	1,05,472	9,86,911	10.6

An amended return has been received for the Mooltan division showing the amount of lands held in mortgage on 31st March 1875. By this the percentage of the revenue of the mortgaged lands on the revenue demand is for the whole division 9.3 per cent.



The return of the districts is as follows, viz. :—

DISTRICTS.				Revenue of mortgaged Lands.	Revenue demand.	Per-centage.
				Rs.	Rs.	
Mooltan	...	...	...	61,194	5,33,772	11·4
Jhang	...	...	...	25,507	2,86,337	8·9
Montgomery	...	...	...	23,293	3,08,744	7·5
Muzaffargarh	...	...	...	42,977	5,26,031	8·1

Extract from the Administration Report of the Punjab for 1874-75.

*Transfers of Land.*—In paragraph 23 of the Summary of last Report the important subject of the transfer and mortgage of lands of agriculturists was considered at some length in reference to a prevalent impression that such lands were being largely alienated to members of the money-lending class; and the opinion was expressed that the transfers which were taking place “did not exceed, nor indeed nearly equal, the number which could safely accompany the natural and healthy development of wealth in a country in backward circumstances;” it was added, however, that the matter would continue to receive attention, and endeavours would be made to obtain more complete information.

Accordingly, under instructions from this Government, the Financial Commissioner has during the year obtained from each district in the Province further statistics of great interest and value; these statistics show in regard to sales not only the *extent, assessment, and price* of land sold during the year, but the proportion sold to agriculturists or non-agriculturists respectively; and in regard to mortgages—

- (1). the amount and assessment of land *actually in mortgage at the close of the year 1873-74*, and the classes to whom mortgaged;
- (2). the amount and assessment of land *mortgaged during the year 1874-75*, the classes to whom mortgaged; and
- (3). the amount of land redeemed from mortgage during the same period.

From these returns it appears that during the year 1874-75 there were 5,952 cases of sale, of which all but 341 were voluntary; so that, taking the number of proprietors at 3,164,457, the number shown in the census of 1868, only 1 proprietor out of 540 parted with his land during the year. The aggregate area of land sold was 79,750 acres, 13,895 acres less than the area sold last year; and the amount was in the proportion of about four-fifths of an acre per square mile of assessed area, and about 2½ acres per square mile of land actually cultivated.

The average extent of each plot sold was 13·3 acres; the average price per acre Rs. 19, being Rs. 5 per acre in excess of the price obtained in 1873-74, and amounting to 27 years' purchase of the revenue assessment. Of the land sold, 59,209 acres, *i. e.*, about three-fifths of an acre per square mile of assessed area, or a little less than 2 acres per square mile of cultivation, were parted with in consequence of debt; but of the amount so parted with the greater portion went into the hands, not of money-lenders, but of agriculturists, and the average price was Rs. 23 an acre. The greatest number of sales took place in the Ráwalpindi, Kángra, Bannu, Dera Ismail Khan, and Jhelum districts,—all of them districts known to be exceptionally prosperous.

In regard to mortgages, it appears that on the 31st March 1874, 1,314,147 acres, or 13 acres per square mile of assessed area, were under mortgage;—in other words, for 1 acre of land encumbered there were 49 acres unencumbered, of which 16 acres were under cultivation. During the year 1874-75, 180,110 acres, being less than 2 acres per square mile of assessed area, and less than 6 acres per square mile of cultivation, were mortgaged, and 35,712 acres were redeemed from mortgage. Of the land mortgaged, 169,087 acres were mortgaged on account of debt, and 11,023 acres in order to raise capital for improvements; the average amount raised per acre was Rs. 16, being Rs. 2 in excess of the amount so raised in 1873-74, and 17 years' purchase of the land revenue assessment. Of the lands under mortgage at the close of 1873-74, five-sixths were in the possession of the mortgagees, and of these mortgagees 74,498 were agriculturists, and 65,404 non-agriculturists. Of lands mortgaged during the year, in 6,676 cases out of 14,586 the mortgagees were agriculturists. Land is most extensively under mortgage in the divisions of Umballa, Jullundur, and Mooltan; of these the two former are known to be eminently prosperous. In the case of Mooltan, where the greatest proportion of cultivated land is in mortgage, and where there are some difficulties of revenue management, 85 per cent. of the cultivated area is unencumbered.

The above statistics appear fully to confirm the opinion expressed in last Report, that there is nothing alarming in the extent to which, or the manner in which, land in the Punjab is being sold or mortgaged; the number and extent of the transactions are, it will be seen, insignificantly small; even if all of them were in favor of the money-lending class, they would not "exceed, nor even nearly equal, the amount which might safely accompany the natural and healthy development of wealth;" but it now appears that the bulk of the transactions are effected, not with money-lenders, but with brother agriculturists, while the fact that the value of land is rapidly rising and now averages nearly 30 years' purchase of the land revenue is sufficient proof that they are not generally caused by any undue pressure of the Government assessment.





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