

ABSTRACT OF THE PROCEEDINGS
OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,
ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS,
1885.

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INDEX
TO
THE ABSTRACT OF PROCEEDINGS
OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,
ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS.
VOL. XXIV.

A

	<i>Pages.</i>
ACT No. XXXVI OF 1858 AMENDMENT BILL, 1885.	
Motion for leave to introduce	515
Introduced and referred to Select Committee	521
Select Committee appointed	<i>ib.</i>
Motion to publish Bill	<i>ib.</i>
ACT No. XI OF 1859. See <i>Bengal Tenancy.</i>	
” ” II OF 1860. ” <i>Carriage of Passengers by Sea.</i>	
” ” XIV OF 1865. ” <i>Central Provinces Civil Courts.</i>	
” ” I OF 1869. ” <i>Oudh Estates.</i>	
” ” VIII OF ” ” <i>Bengal Tenancy.</i>	
” ” IX OF 1872. ” <i>Indian Contract.</i>	
” ” III OF 1873. ” <i>Madras Civil Courts.</i>	
” ” XII OF 1875. ” <i>Indian Ports.</i>	
” ” XVII OF ” ” <i>Burma Courts.</i>	
” ” I OF 1876. ” <i>Indian Telegraphs.</i>	
” ” III OF 1877. ” <i>Indian Registration.</i>	
” ” XVII OF 1878. ” <i>Northern India Ferries.</i>	
” ” XI OF 1879. ” <i>Local Authorities Loan.</i>	
” ” III OF 1881. ” <i>Indian Securities.</i>	
” ” XXII OF ” ” <i>Northern India Excise.</i>	
” ” XXVI OF 1881. See <i>Negotiable Instruments.</i>	
” ” IV OF 1882. ” <i>Transfer of Property.</i>	
” ” VIII OF ” ” <i>Petroleum.</i>	
” ” X OF ” ” <i>Criminal Procedure Code.</i>	
” ” XI OF ” ” <i>Tariff Act Amendment.</i>	
” ” XVIII OF ” ” <i>Burma Steam-boilers.</i>	

ACT No. X OF 1884. „ *Burma Courts.*
 „ „ XVII „ „ *Burma Municipal.*

ADDITIONAL JUDICIAL COMMISSIONER. See *Oudh.*

ADDITIONAL MEMBERS.

HON'BLE R. STEEL—515.

AMENDMENT OF LAWS. See *Act XXXVI of 1858; Bengal Tenancy; Burma Courts; Burma Municipal; Burma Steam-boilers; Carriage of Passengers by Sea; Central Provinces Civil Courts; Criminal Procedure; Indian Contract; Indian Ports; Indian Registration; Indian Securities; Indian Telegraph; Local Authorities Loan; Madras Civil Courts; Mirzapur Stone Mahál Negotiable Instruments; Northern India Excise; Northern India Ferries; Oudh Estates; Petroleum; Tariff; Transfer of Property.*

AMÍR ALÍ, HON'BLE.

Bengal Tenancy Bill 149, 202, 208, 213, 217, 225, 243, 249, 257, 277, 294, 335, 341, 345, 347, 406, 415, 437.

Births, Deaths and Marriages Registration Bill 5

Central Provinces Government Wards Bill 487

Maimon Bill 500, 506

AMÍR ALÍ, HON'BLE, appointed to Select Committee on—

Births, Deaths and Marriages Registration Bill 5

Khojá Succession Bill 483

B

BAYLEY, HON'BLE SIR S. C.

Act XXXVI of 1858 Amendment Bill, 1885 515, 521

Bengal Tenancy Bill 25, 32, 195, 202, 204, 209, 211, 212, 214, 220, 227, 238, 243, 245, 248, 250, 259, 261, 264, 280, 289, 295, 296, 306, 310, 311, 313, 315, 317, 319, 323, 326, 330, 332, 333, 337, 338, 341, 344, 347, 357, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 375, 378, 379, 383, 386, 389, 393, 397, 398, 401, 402, 409, 413, 415, 417, 419, 421, 424—28, 440.

Bengal Tenancy Act, 1885, Postponement Bill 506, 508

Oudh Estates Act, 1869, Amendment Bill 464, 465

BAYLEY, HON'BLE SIR S. C., appointed to Select Committee on—

Act XXXVI of 1858 Amendment Bill 521

	<i>Pages.</i>
BAYLEY, HON'BLE SIR S. C., &c.—contd.	
Births, Deaths and Marriages Registration Bill	5
Burma Courts Act, Amendment Bill	463
Carriage of Passengers by Sea Bill	461
Central Provinces Civil Courts Act Amendment Bill	475
" " Government Wards Bill	458
Criminal Procedure Code, Amendment Bill	471
Indian Contract Act, Amendment Bill	466
Indian Registration Act, Amendment Bill	463
Indian Tramways Bill	516
Khojá Succession Bill	465
Lahore Tramways Bill	453
Land Acquisition (Mines) Bill, 1885	31
Local Authorities Loan Bill	453
Madras Civil Courts Act Amendment Bill	458
Mirzapur Stone Mahál Bill, 1885	500
Petroleum Bill	451
Provincial Small Cause Courts Bill, 1885	519
BENGAL EXCISE ACT, 1878. See <i>Tariff Act, Amendment.</i>	
BENGAL TENANCY BILL.	
Select Committee report (<i>further</i>) presented	25
" " " " considered	32
Amendment proposed and negatived	195-96, 199-203, 203-207, 208-209, 209-12, 212-13, 213-15, 215-17, 218-20, 221-23, 228-41, 241-43, 257-63, 263-64, 265-90, 295, 295-96, 296-309, 309-10, 310-11, 311, 311-12, 312, 313, 313-14, 314-15, 315-18, 319-20, 320, 323-26, 327-31, 332, 333-35, 335-37, 337-38, 343-45, 349-60, 360-61, 361-62, 363-64, 365-66, 366-67, 367-68, 368-70, 371-72, 372, 372-74, 374-75, 375-76, 376-78, 379-81, 381-84, 386-91, 392-95, 395-96, 396-97, 397, 397-98, 399-401, 401-402, 403-406, 406-13, 416-18, 418-20, 420-22, 423.
Amendments withdrawn	198, 203, 207, 212, 218, 221, 244, 248-57, 263, 264, 294, 309, 312, 313, 315, 318, 319, 320, 323-324, 327, 335, 345-346, 364, 365, 374, 402, 403, 424.

	<i>Pages.</i>
BENGAL TENANCY BILL—contd.	
Amendments proposed and adopted	212, 244—48, 321—23, 338— 43, 346—48, 362-63, 365, 367, 370-71, 371, 384—86, 402-403, 413, 413—16, 423-24, 424—28
Further consideration of section 23 postponed	245
Consideration of proposed new section postponed after adjournment for luncheon	297
Adjourned debate resumed	115, 197, 247, 294, 349, 399
Bill passed	450
BENGAL TENANCY ACT, 1885, POSTPONEMENT BILL.	
Motion for leave to introduce	506
Introduced	508
Application for suspension of rules	<i>ib.</i>
Rules suspended	<i>ib.</i>
Bill considered	<i>ib.</i>
Bill passed	<i>ib.</i>
BIRTHS, DEATHS AND MARRIAGES REGISTRATION BILL.	
Motion for leave to introduce	2
Introduced and referred to Select Committee	5
Select Committee appointed	<i>ib.</i>
Motion to publish Bill	7
Select Committee added to	517
BURMA COURTS ACT, 1875, AMENDMENT BILL.	
Motion for leave to introduce	460
Introduced and referred to Select Committee	463
Select Committee appointed	<i>ib.</i>
Motion to publish Bill	464
Select Committee report presented	472
„ „ „ considered	475
Bill passed	476
BURMA MUNICIPAL ACT, 1884, AMENDMENT BILL.	
Motion for leave to introduce	467
Introduced	<i>ib.</i>
Application for suspension of rules	468
Rules suspended	<i>ib.</i>
Bill considered and passed	<i>ib.</i>
BURMA STEAM-BOILERS AND PRIME-MOVERS ACT, 1882, AMENDMENT BILL.	
Select Committee report considered	1
Bill passed	<i>ib.</i>
C	
CARRIAGE OF PASSENGERS BY SEA BILL.	
Select Committee added to	481

	<i>Pages.</i>
CARRIAGE OF PASSENGERS BY SEA BILL—<i>contd.</i>	
Select Committee report presented	465
" " " " considered	471
Bill passed	472
CENTRAL PROVINCES CIVIL COURTS BILL.	
Motion for leave to introduce	469
Introduced and referred to Select Committee	475
Select Committee appointed	<i>ib.</i>
Motion to publish Bill	<i>ib.</i>
Select Committee report presented	479
" " " " considered	483
Bill passed	<i>ib.</i>
CENTRAL PROVINCES GOVERNMENT WARDS BILL.	
Motion for leave to introduce	454
Introduced and referred to Select Committee	458
Select Committee appointed	<i>ib.</i>
Motion to publish Bill	<i>ib.</i>
Select Committee report presented	484
" " " " considered	485
Bill passed	488
CIVIL COURTS. See <i>Central Provinces, Madras.</i>	
CODE. See <i>Criminal Procedure.</i>	
COLVIN, HON'BLE SIR A.	
Indian Securities Bill	32, 451, 452, 473, 489, 494, 500
Tariff Act, &c., Amendment Bill	454, 457, 458
COLVIN, HON'BLE SIR A., appointed to Select Committee on—	
Indian Securities Bill	452
Madras Civil Courts Act Amendment Bill	458
Northern India Excise Act Amendment Bill	9
CONSOLIDATION OF LAWS. See <i>Bengal Tenancy.</i>	
CONTRACT. See <i>Indian Contract.</i>	
COUNCIL OF THE GOVERNOR GENERAL FOR MAKING LAWS AND REGULATIONS.	
Adjournments of	4, 10, 11, 20, 24, 26, 30, 114, 196, 245, 290, 348, 393, 450, 452, 455, 461, 466, 468, 473, 476, 477, 479, 484, 491, 509, 513, 518, 521.
Division of	290, 348, 391
Meetings of	1, 5, 11, 13, 21, 25, 27, 31, 115, 197, 247, 291, 349, 399, 451, 453, 457, 463, 467, 469, 475, 477, 479, 481, 485, 493, 511, 515, 519.
COURTS. See <i>Burma, Central Provinces, Madras.</i>	
CRIMINAL PROCEDURE CODE, 1882, &c., AMENDMENT BILL.	
Motion for leave to introduce	468
Introduced and referred to Select Committee	470
Select Committee appointed	471

	<i>Pages.</i>
CRIMINAL PROCEDURE CODE— <i>contd.</i>	
Motion to publish Bill	471
Select Committee added to	518
CUSTOMS. See <i>Tariff Act, Amendment.</i>	

D

DARBHANGA. See <i>Luchmessur Singh, Hon'ble Mahārājā.</i>	
DEBATE adjourned	114, 196, 245, 290, 348, 398
Resumed	115, 197, 247, 294, 349, 399
DEBATES IN COUNCIL.	
Bengal Tenancy Bill	32—290, 294-450,
Births, Deaths and Marriages Registration Bill	5-7
Central Provinces Civil Courts Act Amendment Bill	485-88
DIVISION OF COUNCIL. See <i>Council.</i>	

E

ESTATES. See <i>Oudh Estates.</i>	
EVANS, HON'BLE G. H. P.	
Bengal Tenancy Bill	99, 205, 208, 222, 232, 258, 262, 265, 283, 284, 301, 381, 387, 392, 396, 400, 404, 407, 424, 429.
EVANS, HON'BLE G. H. P., appointed to Select Committee on—	
Criminal Procedure Code, &c., Amendment Bill	518
Indian Contract Act, Amendment Bill	517
Indian Registration Act, Amendment Bill	518
Khojā Succession Bill	517
Transfer of Property Act Amendment Bill	4
EXCISE. See <i>Northern India, Tariff.</i>	

F

FERRIES. See *Northern India.*

G

GIBSON, HON'BLE I. M.	
Bengal Tenancy Bill	160, 206, 207, 211, 214, 218, 226, 236, 254, 258, 277, 295, 309, 319, 325, 328, 341, 346, 348, 355, 362, 364, 365, 368, 370, 373, 375, 376, 378, 382, 386, 391, 400, 401, 403, 406, 409, 437

	<i>Pages.</i>
GIBBS, HON'BLE J.	
Petroleum Act Amendment Bill	291, 451
GIBBS, HON'BLE J., appointed to Select Committee on Petroleum Bill	451
GOODRICH, HON'BLE H. ST.A.	
Bengal Tenancy Bill	115, 224
GOODRICH, HON'BLE H. ST.A., appointed to Select Committee on—	
Births, Deaths and Marriages Registration Bill	5
Indian Contract Act Amendment Bill	27
Indian Telegraph Act Amendment Bill	4
Indian Tramways Bill	516
Petroleum Act Amendment Bill	517
Transfer of Property Act Amendment Bill	4
GOVERNMENT WARDS. See <i>Central Provinces.</i>	
GOVERNOR GENERAL (<i>Right Hon'ble the Earl of Dufferin</i>).	
Bengal Tenancy Bill	194, 245, 247, 256, 261, 296, 312, 384, 446

H

HOPE, HON'BLE, T. C.	
Indian Telegraph Act Amendment Bill	463, 472
Land Acquisition (Mines) Bill, 1885	29, 31, 32, 479, 493, 494
Local Authorities Loan Act Amendment Bill	452, 453, 479, 481, 483
Northern India Ferries Act Amendment Bill	476, 477
HOPE, HON'BLE T. C., appointed to Select Committee on—	
Indian Tramways Bill	516
Lahore Tramways Bill	453
Land Acquisition (Mines) Bill	31
Local Authorities Loan Act Amendment Bill	453
Northern India Ferries Act Amendment Bill	477
HUNTER, HON'BLE W. W.	
Bengal Tenancy Bill	142, 217, 225, 234, 241, 254, 304, 310, 313, 314, 316, 320, 321, 328, 340, 347, 363, 366, 372, 374, 389, 397, 413, 416, 436
Central Provinces Government Wards Bill	488
HUNTER, HON'BLE W. W., appointed to Select Committee on—	
Births, Deaths and Marriages Registration Bill	5
Central Provinces Civil Courts Act Amendment Bill	475
Central Provinces Government Wards Bill	458
Criminal Procedure Code Amendment Bill	471
Indian Registration Act Amendment Bill	463
Khojâ Succession Bill	465
Northern India Ferries Act Amendment Bill	477
Provincial Small Cause Courts Bill, 1885	519

I

ILBERT, HON'BLE C. P.

Bengal Tenancy Bill	176, 227, 334, 358, 380, 411, 415, 423
Births, Deaths and Marriages Registration Bill	2, 5, 6, 7, 517
Burma Courts Act Amendment Bill	460, 463, 464, 472, 475, 476
Burma Municipal Act Amendment Bill	467, 468
Burma Steam-boilers and Prime-movers Act Amendment Bill	1
Carriage of Passengers by Sea Bill	461, 468, 471, 472
Central Provinces Civil Courts Act Amendment Bill	469, 475, 479, 483
Central Provinces Government Wards Bill	454, 458, 484, 485, 488
Criminal Procedure Code, &c., Amendment Bill	463, 470, 471, 518
Indian Contract Act Amendment Bill	18, 27, 28, 466, 517
Indian Ports Act Amendment Bill	18, 21, 22
Indian Registration Act Amendment Bill	459, 463, 518
Indian Securities Bill	496
Indian Telegraph Act Amendment Bill	4
Indian Tramways Bill	512, 513, 516
Khojâ Succession Bill	465, 483, 517
Lahore Tramways Bill	9, 453, 454, 520
Land Acquisition (Mines) Bill	494
Madras Civil Courts Act Amendment Bill	454, 458, 500, 511, 512
Maimon Bill	505, 512
Mirzapur Stone Mahâl Bill, 1885	489, 500
Negotiable Instruments Act Amendment Bill	11, 13, 16
Panch Mahâls Laws Bill	28
Petroleum Bill	517
Provincial Small Cause Courts Bill, 1885	516, 517, 519, 520
Transfer of Property Act Amendment Bill	4, 11, 16, 18

ILBERT, HON'BLE C. P., appointed to Select Committee on various Bills

5, 9, 27, 31, 451, 452, 453, 458, 463, 471, 475, 477, 500, 516, 519, 521
--

INDIAN CONTRACT ACT, 1872, AMENDMENT BILL.

Motion for leave to introduce	18
Introduced and referred to Select Committee	27
Select Committee appointed	ib.
Motion to publish Bill	28
Select Committee added to	466, 517

INDIAN PORTS ACT, 1875, AMENDMENT BILL.

Select Committee report presented	18
" " " considered	21
Bill passed	22

	<i>Pages.</i>
INDIAN REGISTRATION ACT, 1877, AMENDMENT BILL.	
Motion for leave to introduce	459
Introduced and referred to Select Committee	463
Select Committee appointed	<i>ib.</i>
Motion to publish Bill	<i>ib.</i>
Select Committee added to	518
INDIAN SECURITIES BILL.	
Motion for leave to introduce	32
Introduced and referred to Select Committee	451-52
Select Committee appointed	452
Motion to publish Bill	<i>ib.</i>
Select Committee report presentation postponed	473
" " " presented	489
" " " considered	494
Bill passed	500
INDIAN TELEGRAPH ACT, 1876, AMENDMENT BILL.	
Select Committee added to	4
" " report presented	468
" " " considered	472
Bill passed	<i>ib.</i>
INDIAN TRAMWAYS BILL.	
Motion for leave to introduce	512
Introduced	513
Motion to publish Bill	<i>ib.</i>
Bill referred to Select Committee	516
Select Committee appointed	<i>ib.</i>
INSTRUMENTS. See <i>Negotiable Instruments.</i>	

J

JUDICIAL COMMISSIONERS. See *Oudh.*

K

KHOJA SUCCESSION BILL.

Select Committee added to	465, 483, 517
-------------------------------------	---------------

L

LAHORE TRAMWAYS BILL.

Motion for leave to introduce	9
Introduced and referred to Select Committee	453
Select Committee appointed	<i>ib.</i>
Motion to publish Bill	454
Select Committee report presented	520

	<i>Pages.</i>
LAND ACQUISITION (MINES) BILL.	
Motion for leave to introduce	29
Introduced and referred to Select Committee	31
Select Committee appointed	<i>ib.</i>
Motion to publish Bill	32
Select Committee report presented	479
" " " considered	493
Amendment proposed and adopted	494
Bill passed	<i>ib.</i>
LAWS. See <i>Panch Maháls Laws.</i>	
LIEUTENANT-GOVERNOR OF BENGAL.	
Bengal Tenancy Bill	168, 207, 211, 226, 236, 254, 262, 278, 304, 325, 329, 341, 356, 382, 386, 389, 415, 438.
LOAN. See <i>Local Authorities.</i>	
LOCAL AUTHORITIES LOAN ACT, 1879, AMENDMENT BILL.	
Motion for leave to introduce	452
Introduced and referred to Select Committee	453
Select Committee appointed	<i>ib.</i>
Motion to publish Bill	<i>ib.</i>
Select Committee report presented	479
" " " considered	481
Bill passed	483
LJCHMESSUR SINGH, HON'BLE MAHÁRÁJÁ.	
Bengal Tenancy Bill	96, 197, 198, 199, 203, 207, 209, 212, 213, 218, 221, 226, 244, 245, 263, 264, 284, 295, 309, 311, 312, 315, 318, 320, 323, 324, 327, 329, 421, 428.
LUNATIC ASYLUMS. See <i>Act XXXVI of 1858.</i>	

M

MADRAS CIVIL COURTS ACT, 1873, AMENDMENT BILL.	
Motion for leave to introduce	454
Introduced and referred to Select Committee	458
Select Committee appointed	<i>ib.</i>
Motion to publish Bill	<i>ib.</i>
Select Committee report presented	500
" " " considered	511
Bill passed	512
MAIMON BILL.	
Motion for leave to introduce	500
Introduced	506
Motion to publish Bill	612
MEETINGS. See <i>Council of the Governor General.</i>	
MINES AND MINERALS. See <i>Land Acquisition.</i>	

	<i>Pages.</i>
MIRZAPUR STONE MAHÁL BILL.	
Motion for leave to introduce	489
Introduced and referred to Select Committee	500
Select Committee appointed	<i>ib.</i>
Motion to publish Bill	<i>ib.</i>
MUNICIPAL. See <i>Burma Municipal.</i>	

N

NEGOTIABLE INSTRUMENTS ACT, 1881, AMENDMENT BILL.	
Select Committee report presented	11
„ „ „ considered	13
Bill passed	16
NEW MEMBER.	
Hon'ble R. Steel	515
NORTHERN INDIA EXCISE ACT, 1881, AMENDMENT BILL.	
Bill referred to Select Committee	9
Select Committee appointed	<i>ib.</i>
„ „ report presented	19
„ „ „ considered	23
Bill passed	24
NORTHERN INDIA FERRIES ACT, 1878, AMENDMENT BILL.	
Motion for leave to introduce	476
Introduced and referred to Select Committee	477
Select Committee appointed	<i>ib.</i>
Motion to publish Bill	<i>ib.</i>

O

OUDH ADDITIONAL JUDICIAL COMMISSIONERS BILL.	
Motion for leave to introduce	7
Introduced	9
Motion to publish Bill	<i>ib.</i>
Bill considered	19
Amendment proposed and adopted	20
Bill passed	<i>ib.</i>
OUDH ESTATES ACT, 1869, AMENDMENT BILL.	
Bill considered	464
Amendment proposed and adopted	465
Bill passed	<i>ib.</i>

P

PANCH MAHÁLS LAWS BILL.	
Bill considered	28
Amendments proposed and adopted	<i>ib.</i>
Bill passed	<i>ib.</i>

PEÁRI MOHAN MUKERJÍ, HON'BLE BARÚ.	
Bengal Tenancy Bill	117, 195, 201, 203, 208, 209, 215, 221, 234, 241, 244, 251, 257, 261, 263, 274, 284, 295, 296, 309, 311, 312, 313, 314, 315, 318, 323, 324, 326, 328, 331, 332, 333, 335, 337, 339, 343, 345, 349, 359, 360, 361, 363, 364, 365, 367, 370, 371, 372, 374, 376, 378, 379, 380, 381, 392, 395, 396, 397, 398, 399, 401, 402, 403, 405, 406, 412, 414, 416, 418, 420, 422, 423, 424, 430.
Provincial Small Cause Courts Bill	519
PEÁRI MOHAN MUKERJÍ, HON'BLE BARÚ, appointed to Select Committee on—	
Births, Deaths and Marriages Registration Bill	517
Criminal Procedure Code, &c., Amendment Bill	518
Provincial Small Cause Courts Bill	519
PENAL CODE AMENDMENT. See <i>Criminal Procedure.</i>	
PETROLEUM ACT AMENDMENT BILL.	
Motion for leave to introduce	291
Introduced and referred to Select Committee	451
Select Committee appointed	<i>ib.</i>
Motion to publish Bill	<i>ib.</i>
Select committee added to	517
PORTS. See <i>Indian Ports.</i>	
POSTPONEMENT OF CERTAIN PROVISIONS OF BENGAL TENANCY ACT, 1885. See <i>Bengal Tenancy Act postponement.</i>	
POSTPONEMENT of further consideration of section 23 of the Bengal Tenancy Bill of presentation of report of Select Committee on Indian Securities Bill	245 473
PRESIDENT. See <i>Governor General.</i>	
PRIME-MOVERS. See <i>Burma Steam-boilers.</i>	
PRISONERS ACT AMENDMENT. See <i>Criminal Procedure.</i>	
PROVINCIAL SMALL CAUSE COURTS BILL.	
Motion for leave to introduce	516
Introduced	517
Motion to publish Bill	<i>ib.</i>
Bill referred to Select Committee	519
Select Committee appointed	<i>ib.</i>
PUBLICATION OF BILLS.	
Act XXXVI of 1858 Amendment Bill	521
Births, Deaths and Marriages Registration Bill	7
Burma Courts Act, 1875, Amendment Bill	464
Central Provinces Civil Courts Act Amendment Bill	475
Central Provinces Government Wards Bill	453
Criminal Procedure Code, 1882, &c., Amendment Bill	471
Indian Contract Act, 1872, Amendment Bill	28

	<i>Pages.</i>
PUBLICATION OF BILLS—contd.	
Indian Registration Act Amendment Bill	463
Indian Securities Bill	452
Indian Tramways Bill	513
Lahore Tramways Bill	454
Land Acquisition (Mines) Bill, 1885	32
Local Authorities Loan Act Amendment Bill	453
Madras Civil Courts Act, 1873, Amendment Bill	458
Maimon Bill	512
Mirzapur Stone Mahál Bill, 1885	500
Northern India Ferries Act Amendment Bill	477
Oudh Additional Judicial Commissioner's Bill	9
Petroleum Act Amendment Bill	451
Provincial Small Cause Courts Bill	517
Q	
QUINTON, HON'BLE J. W.	
Bengal Tenancy Bill	82, 216, 221, 244, 295, 300, 327, 343, 353, 421.
Northern India Excise Act Amendment Bill	9, 19, 23, 24
Oudh Additional Judicial Commissioners Bill	7, 9, 19, 20
QUINTON, HON'BLE J. W., appointed to Select Committee on—	
Act XXXVI of 1858 Amendment Bill	521
Indian Contract Act Amendment Bill	27
Indian Securities Bill	452
Mirzapur Stone Mahál Bill	500
Northern India Excise Act Amendment Bill	9
Petroleum Act Amendment Bill	517
Provincial Small Cause Courts Bill	519
R	
REGISTRATION. See Births, Deaths and Marriages; Indian Registration.	
REYNOLDS, HON'BLE H. J.	
Bengal Tenancy Bill	136, 201, 206, 208, 210, 212, 213, 216, 219, 224, 228, 241, 245, 253, 263, 275, 290, 297, 308, 313, 314, 316, 318, 324, 327, 333, 334, 337, 338, 339, 354, 360, 363, 365, 368, 371, 373, 376, 377, 381, 385, 388, 408, 414, 415, 417, 421, 433.
Indian Ports Act Amendment Bill	22
RULES FOR THE CONDUCT OF BUSINESS.	
Suspension of —	463, 503
S	
SECURITIES. See Indian Securities.	
SELECT COMMITTEE.	
Additions to —	4, 461, 465, 466, 483, 517, 518,

TELEGRAPH. See *Indian Telegraph*.

TENANCY. See *Bengal Tenancy*.

TESTAMENTARY AND INTERSTATE SUCCESSION. See *Khojâ Succession*.

TRAMWAYS. See *Indian Tramways, Lahore Tramways*.

TRANSFER OF PROPERTY ACT, 1882, AMENDMENT BILL—

Select Committee added to	4
„ „ report presented	11
„ „ „ considered	16
Bill passed	18

V

VISHVANATH NARAYAN MANDLIK, HON'BLE RAO SAHEB—

Bengal Tenancy Bill	123, 224, 245, 252, 275, 297, 324, 328, 339, 367, 368, 376, 383, 394, 387, 405, 408, 431.
-------------------------------	---

Births, Deaths and Marriages Registration Bill	7
--	---

VISHVANATH NARAYAN MANDLIK, HON'BLE RAO SAHEB, appointed to Select Committee on—

Indian Contract Act Amendment Bill	27
„ Registration Act Amendment Bill	518
„ Tramways Bill	516
Provincial Small Cause Courts Bill, 1885	519

*Abstract of the Proceedings of the Council of the Governor General of India,
assembled for the purpose of making Laws and Regulations under the
provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at Government House on Friday, the 2nd January, 1885.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B.,
G.C.M.G., P.C., F.R.S., D.C.L., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G.
The Hon'ble J. W. Quinton.
The Hon'ble Amír Alí.
The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.
The Hon'ble H. J. Reynolds.
The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.
The Hon'ble Peári Mohan Mukerji.
The Hon'ble H. St. A. Goodrich.

BURMA STEAM-BOILERS AND PRIME-MOVERS ACT, 1882,
AMENDMENT BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee
on the Bill to amend the Burma Steam-boilers and Prime-movers Act, 1882,
be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

2 BIRTHS, DEATHS AND MARRIAGES REGISTRATION.

[*Mr. Ilbert.*]

[2ND JANUARY,

BIRTHS, DEATHS AND MARRIAGES REGISTRATION BILL, 1885.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to provide for the voluntary registration of certain births and deaths, for the establishment of General Registry Offices for keeping registers of certain births, deaths and marriages, and for certain other purposes. He said:—

“The objects of this Bill are three. The first is to establish a system of voluntary registration of births and deaths happening amongst certain classes of the community; the second is to improve the system of registering marriages solemnized under the two Marriage Acts of 1872; and the third is to provide a machinery for giving evidential value to entries in certain registers or records of baptisms, marriages, deaths and burials which are in existence but which are not kept under the authority of any particular law.

“The first of these subjects has been under the consideration of the Government of India for a great many years; it first came up, I believe, in the year 1869, and since then the attention of the Government has been repeatedly directed to it by various Christian religious bodies. The present state of the law is this. The Indian Statute-book does not contain any general law for the registration of births and deaths. There are several Municipal and other local Acts under which births and deaths are registered, but in the first place these Acts are of a strictly local character and leave a great part of the country unprovided for, and in the next place their provisions are directed primarily to statistical purposes, and the entries made under them are not of such a character as to make them of much value as evidence of particular births and deaths. Now, this state of things has not unfrequently caused serious inconvenience. For instance, references are from time to time made to the Secretary of State and the Government of India for proofs of age or proofs of death in cases affecting individual interests of great importance, such as rights to property; and when such references are made, we often find it difficult to supply the evidence required. Then His Excellency the Commander-in-Chief tells me that European soldiers often find great difficulty in obtaining such evidence of the age of their children as will enable them to draw the allowances granted by the State to soldiers' children. Of course the most thoroughgoing remedy for this state of things would be to pass a general law for the compulsory registration of births and deaths throughout British India, but the general opinion is that the country is not yet ripe for a measure of that kind, and there appear to be serious objections to the passing of a law

1885.]

[*Mr. Ilbert.*]

for the compulsory registration of births and deaths which would be confined in its application to Christians or Europeans or any other particular classes of Her Majesty's subjects. This being so, we propose to content ourselves with passing a permissive law under which no one will be required to register, but ample facilities for registering births and deaths will be given to any one who desires to have unimpeachable evidence of such events. When I say no one will be required to register births or deaths, it will be understood that this permissive law will be outside of, and will not interfere with, the provisions for compulsory registration contained in the various local Acts to which I have referred. The classes to which it is proposed to apply these provisions of this Bill are the classes to which the present Indian Succession Act applies, that is to say, not only Europeans and Christians, but also East Indians, Jews, Armenians and Pársís. These are the only classes who would be likely to make any extensive use of this law. If it is found that the provisions of the law are generally appreciated, it will be possible to give them a wider application hereafter.

“So much as regards the registration of births and deaths. Then, as to marriages. The two Marriage Acts to which I have referred are Act XV of 1872, the Indian Christian Marriage Act, and Act III of 1872, which has not been christened with a short title, but which was passed with special reference to the celebration of marriages amongst the Brahma community. The chief defect in these two Acts is that they do not provide for an index being kept to the registers of marriages, and it is obvious that without an index the value of a register is materially impaired. It is part of our scheme for registering births and deaths under this Bill to establish a central registry office to which copies of the registers of births and deaths are to be sent, and in which an index is to be kept for public reference; and we propose to utilize this machinery for the evidence of marriages by requiring copies of registers kept under the two Marriage Acts of 1872 to which I have referred to be sent up and indexed in the same way in the same registry office.

“Then, lastly, there are at present a number of informal registers or records of baptisms, deaths, burials and marriages which have not been kept under the requirements of any law, and are therefore probably not admissible as evidence in judicial proceedings, although many of them have been faithfully and correctly kept up. It would be dangerous to pass a law giving evidential value to all entries in these records, and what we propose to do is to follow the precedent which has been set by English legislation on the same subject, and to appoint Commissioners whose functions it will be to examine all the registers

SUNDRY.[*Mr. Ilbert.*]

[2ND JANUARY, 1885.]

of this nature which may be sent up for examination within a specified period after the passing of the Bill. These Commissioners are to prepare an index of such registers as they may declare to be admissible, and copies of registers so declared are to be admissible in evidence."

The Motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble MR. ILBERT also moved that the Hon'ble Messrs. Evans and Goodrich be added to the Select Committee on the Bill to amend the Transfer of Property Act, 1882.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Hon'ble Mr. Goodrich be added to the Select Committee on the Bill to facilitate the construction of Telegraphs, and to amend the Indian Telegraph Act, 1876.

The Motion was put and agreed to.

The Council adjourned to Friday, the 16th January, 1885.

FORT WILLIAM;
The 6th January, 1885.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

*Abstract of the Proceedings of the Council of the Governor General of India,
assembled for the purpose of making Laws and Regulations under the
provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at Government House on Friday, the 16th January, 1885.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B.,
G.C.M.G., P.C., G.M.S.I., G.M.I.E., *presiding.*

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Durbhunga.

The Hon'ble J. W. Quinton.

The Hon'ble T. M. Gibbon, C.I.E.

The Hon'ble Amír Alí.

The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.

The Hon'ble H. J. Reynolds.

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

The Hon'ble Peári Mohan Mukerji.

The Hon'ble H. St. A. Goodrich.

**BIRTHS, DEATHS AND MARRIAGES REGISTRATION BILL,
1885.**

The Hon'ble MR. ILBERT introduced the Bill to provide for the voluntary Registration of certain Births and Deaths, for the establishment of General Registry Offices for keeping Registers of certain Births, Deaths and Marriages, and for certain other purposes, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley, Messrs. Hunter, Amír Alí and Goodrich and the Mover.

The Hon'ble MR. AMÍR ALÍ said:—"Though I shall have an opportunity of submitting certain proposals which I have informally mentioned to the hon'ble the Law Member for the purpose of extending the operation of this Bill, I

think it desirable that I should say a few words in Council to indicate the direction to which my proposals tend, and to draw some degree of public attention towards them. As the Bill stands at present, its operation is confined exclusively to those classes of the community who are subject to the Indian Succession Act. I do not exactly understand the reason for confining the operation of the Bill to those classes, and it has been strongly represented to me to urge upon this legislature the desirability of extending the benefits of such provisions, the want of which is felt almost every day throughout the Mufassal, to all Her Majesty's subjects in India. When it is remembered what an important position the law of intestate succession holds in both the Hindu and Muhammadan systems of jurisprudence, and the difficulties which arise regarding questions of the dates of births and deaths of individuals, I think the demand will not be considered to be unreasonable. Besides, amongst Muhammadans questions relating to the custody of children are connected materially with the question of the age of children; and though amongst Hindus the method of keeping a record of the date of birth is more regular than amongst Muhammadans, still as far as both the communities are concerned the evidential value of such records, as are produced in Courts has been very much questioned, and I may mention that, in the case of candidates going to England to study for the Civil Service, difficulties have frequently arisen regarding their age, which, I submit, would be avoided if Hindus and Muhammadans were allowed to have the benefit of this measure. Questions might arise with reference to the machinery under which such registration can be effected, but, as far as Muhammadans are concerned, there is at present a machinery existing under the Bengal Council Act I. of 1876 for the optional registration of marriages, which can be very usefully made to serve the purposes of registration of births and deaths' also amongst Muhammadans. With reference to Hindus of course it will be a matter for the consideration of the Select Committee what special measures should be enforced in regard to them."

The Hon'ble MR. ILBERT, said:—"Our desire is to extend the procedure for the voluntary registration of births and deaths to those classes of the community who are likely to avail themselves of it, and to whom it is likely to prove of material use. If there is any reason to believe that this procedure will be of use to the Muhammadan community, I am sure there will be every disposition on the part of the Government of India to extend it to Muhammadans as well as to the other classes who are named in the Bill. Perhaps the hon'ble member and his friends will bring the subject before the Local Governments, to whom

1885.] [*Mr. Ilbert ; Rao Saheb V. N. Mandlik ; Mr. Ilbert ; Mr. Quinton.*]

this Bill will be referred, and then we shall be in a position to discuss the question when the Bill comes before the Select Committee for consideration."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said :—" It strikes me that the Bill as it has been introduced will be better adapted for the purposes for which it is intended than if its scope is extended as has been suggested by the Hon'ble Amír Alí. I am sorry I cannot see my way to support the changes indicated by Mr. Amír Alí, because, to speak nothing of financial considerations, there are other difficulties in the way. Indeed, so far as I know, the feelings of leading Hindu gentlemen all over India (outside Bengal perhaps) would be opposed to any system of registering marriages, births, &c. None but those mentioned by Mr. Ilbert has asked for it. The question of sending candidates for the Civil Service to England may be a very important one to the very few persons who are concerned, and even in their case there is no real difficulty ; and it strikes me that, when we consider the number of people whom this Bill will affect, if its provisions are extended to Hindus and Muhammadans, and the cost of the machinery which will be required to bring the Bill into operation, and also the little value which would be set upon it by those classes,—I am now speaking the views of Hindus and Muhammadans of nearly all the provinces in India,—I think it is a matter of serious consideration whether, without a proper reference to the Governments of the various provinces, this Council would think of extending the scope of the Bill in the manner which has been suggested by the hon'ble member."

The Hon'ble MR. ILBERT explained that there was no proposal before the Council to extend the scope of the Bill at the present stage.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

OUDH ADDITIONAL JUDICIAL COMMISSIONER'S BILL.

The Hon'ble MR. QUINTON moved for leave to introduce a Bill to provide for the temporary appointment from time to time of an Additional Judicial Commissioner for Oudh. He said :—

" MY LORD,—Under the existing law relating to Civil Courts in Oudh the Court of the Judicial Commissioner consists of a single Judge. When that

law. (Act XIII of 1879) was passed, it was considered apparently that no great increase in the work of the Judicial Commissioner's Court was to be expected, and that a Court consisting of a single Judge would be strong enough to dispose of the business imposed by law on the Judicial Commissioner. These expectations have proved to be unfounded. The work of the Judicial Commissioner's Court has increased very materially, and arrears have accumulated in proportion. Civil appeals rose from 271 in 1879 to 566 in 1883, appeals of all descriptions from 765 in the former to 1,194 in the latter year, and the list of appeals of all sorts in arrears has now reached the unprecedented number of 699.

“The Lieutenant-Governor and Chief Commissioner is satisfied that this steady increase of arrears is not attributable to any lack of exertion or to any want of ability on the part of the presiding officer of the Court, but to the fact that the work is augmenting annually to a degree that carries its total quantity beyond the power and capacity of a single Judge to cope with properly. This opinion was shared in by the late Judicial Commissioner, Mr. Sparks, described by His Honour as an officer of remarkable industry and long experience in Oudh, who wrote, shortly before his retirement from the service, about a year ago, that the work that comes before the Judicial Commissioner is more than any one officer can dispose of satisfactorily, and that in the preceding year he began with 476 cases, and that at its close 587 were pending.

“I may also say that the mere number of appeals gives an inadequate indication of the pressure of business in the Court. In Oudh, civil suits deal with interests of greater magnitude, owing to the number of tahsildári properties, than elsewhere in Upper India, and frequent appeals go before the Privy Council. In 1882 the Judicial Commissioner was engaged for a whole month in trying one suit of this kind, nor does litigation of this class, involving claims to great estates and difficult questions of succession, appear likely to diminish in the Province.

“Under these circumstances the Council will, I hope, admit that an urgent case has been made out for strengthening the Court of the Judicial Commissioner and assisting that officer in the discharge of his more important functions.

“The Bill which I now move for leave to introduce proposes to effect these objects by empowering the Executive Government to make a temporary

LAHORE TRAMWAYS; ACT XXII OF 1881 AMENDMENT. 9
1885.] [Mr. Quinton; Mr. Ilbert; Mr. Quinton.]

appointment from time to time of an Additional Judicial Commissioner for Oudh, and is in substance a revival of provisions to that effect which were legally in force in Oudh before the passing of the present Oudh Civil Courts Act."

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also introduced the Bill.

The Hon'ble MR. QUINTON also moved that the Bill and Statement of Objects and Reasons be published in the *North-Western Provinces and Oudh Government Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

LAHORE TRAMWAYS BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to authorize the making and to regulate the working of Street Tramways in Lahore. He said :—"The object of this Bill is merely to confirm and supplement an agreement entered into for making some tramways in Lahore, and it follows very closely the lines of the Rangoon Tramways Act which was passed last year."

The Motion was put and agreed to.

ACT XXII OF 1881 AMENDMENT BILL.

The Hon'ble MR. QUINTON moved that the Bill to amend Act XXII of 1881 be referred to a Select Committee consisting of the Hon'ble Mr. Ilbert, Sir A. Colvin and the Mover, with instructions to report within a month. He said :—

"MY LORD,—The Act which the Bill proposes to amend extends to the territories administered by the Lieutenant-Governors of the North-Western Provinces and the Panjáb, and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg and Ajmer-Merwára.

"When the Bill was introduced I explained to the Council that it had been prepared at the instance of the Government of the North-Western Provinces and Oudh, and in reply to a question from Your Excellency's predecessor stated that before it passed out of Select Committee and came on finally in Council the views of the other Governments affected by it would be received.

[*Mr. Quinton.*]

[16TH JANUARY, 1885.]

“ I may now say that replies have already been sent in by all those Governments and Administrations, except one, and that those who have replied are all in favour of legislation in the direction of the Bill, but make suggestions as to modifications of detail which will be considered and dealt with by the Select Committee.

“ As the matter is stated by the Government of the North-Western Provinces and Oudh to be one of some urgency, I propose that the Select Committee be directed to report within a month.”

The Motion was put and agreed to.

The Council adjourned to Friday, the 23rd January, 1885.

FORT WILLIAM;
The 22nd January, 1885. }

R. J. CROSTHWAITE,
Offg. Secy. to the Government of India,
Legislative Department.

*Abstract of the Proceedings of the Council of the Governor General of India,
assembled for the purpose of making Laws and Regulations under the
provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at Government House on Friday, the 23rd January, 1885.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B.,
G.C.M.G., P.C., G.M.S.I., G.M.I.E., *presiding.*

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble T. M. Gibbon, C.I.E.

The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.

The Hon'ble H. J. Reynolds.

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

The Hon'ble Peári Mohan Mukerji.

NEGOTIABLE INSTRUMENTS ACT, 1881, AMENDMENT BILL.

The Hon'ble MR. ILBERT presented the Report of the Select Committee
on the Bill to amend the Negotiable Instruments Act, 1881.

TRANSFER OF PROPERTY ACT, 1882, AMENDMENT BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Com-
mittee on the Bill to amend the Transfer of Property Act, 1882.

The Council adjourned to Friday, the 30th January, 1885.

R. J. CROSTHWAITE,

*Officiating Secretary to the Govt. of India,
Legislative Department.*

FORT WILLIAM; }
The 23rd January, 1885. }

*Abstract of the Proceedings of the Council of the Governor General of India,
assembled for the purpose of making Laws and Regulations under the
provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at Government House on Friday, the 30th January, 1885.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B.,
G.C.M.G., P.C., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Durbhunga.

The Hon'ble J. W. Quinton.

The Hon'ble T. M. Gibbon, C.I.E.

The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.

The Hon'ble H. J. Reynolds.

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

The Hon'ble Peári Mohan Mukerji.

The Hon'ble H. St.A. Goodrich.

NEGOTIABLE INSTRUMENTS ACT, 1881, AMENDMENT BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to amend the Negotiable Instruments Act, 1881, be taken into consideration. He said :—

“ This Bill proposes to amend in certain matters of detail one of the important codifying measures which were passed into law by my learned predecessor Mr. Whitley Stokes. It was introduced at the suggestion of some leading bankers, who pointed out that the Indian Negotiable Instruments Act imposed on persons dealing with bills of exchange the observance of certain formalities which, though they survive in text-books, have become obsolete in modern mercantile practice, and are not required by the recent English Statute on the same subject.

• “Accordingly, we proposed so to amend the Indian Act as to assimilate it in those points with the English Statute, which may be regarded as a later and revised edition of the law.

• “The papers which have been submitted to us since the Bill was introduced have brought to our notice certain other provisions of the English Statute which may, in our opinion, be advantageously inserted in the Indian Act.

“ We propose, in accordance with suggestions which have been made in these papers, to provide machinery whereby the owner of a lost bill or note can get a duplicate from the drawer or maker to declare that presentment of a bill through the post office, when such presentment is authorised by agreement or usage, shall be sufficient; to make it clear that the demand which is required to be made by a notary public for the purpose of rendering a protest valid need not be made by the notary in person; and to provide, as in the English Statute, that in certain cases noting shall be deemed equivalent to protest.

“ In dealing with these matters the view on which we have proceeded is that we can, as a general rule, with safety and propriety go as far as the English legislature has thought fit to go in the direction of relaxing formalities, but that we ought not to go further. With respect to one provision we have not thought it advisable to go quite so far. Having regard to the difference between the postal arrangements in England and in India, we think that when presentment of an instrument is made by post it should in this country be made by registered letter.

“ In the clauses of the Bill relating to notaries public we have made no alteration. Perhaps I ought to explain to the Council how it is that we come to be dealing with notaries public under this Bill. The office of notary public, as the Council are doubtless aware, is one of great antiquity. In France and other Continental countries the notary public plays a very important part, and his intervention is constantly required in the legal transactions of everyday life. In countries under the English law his functions are of a much more limited character, and the most important branch of his practice is connected with certain formalities relating to bills of exchange and promissory notes. Nevertheless, the English notary public enjoys all the prestige attaching to the membership of an ancient and venerable profession; he derives his authority from no less a personage than the Archbishop of Canterbury, and he is supposed to act under the control of a mysterious body known as the Court of Faculties. In India, as might be expected, the members of this profession are scarce. In Calcutta you may entertain a notary

1885.]

[*Mr. Ilbert.*]

public unawares, but throughout British India these archiepiscopal emissaries are few and far between. Under these circumstances the Government of India thought it might be for the convenience of the mercantile public if it established what may be called a local manufacture of notaries public. Accordingly, we have appointed persons to be notaries public under the Negotiable Instruments Act, and, having appointed them, we have laid down rules for their guidance and fixed the fees which they are to take. As these persons are our own officers, we can, of course, regulate their proceedings as we please, but we think it advisable to give express legislative recognition to the executive arrangements which we have made; and that is what we propose to do by the Bill. It has been suggested that we ought to go further and take power to regulate the proceedings of notaries public appointed in England but exercising their functions in India. It may be that if I proposed to take this power I should be charged with infringing the prerogatives of the Archbishop of Canterbury or of the Court of Faculties. This is a charge which I should be most unwilling to incur, and which it is not at all necessary that I should incur, because I feel sure that the procedure and fees of the two classes of notaries—those appointed in England and those appointed in India—will in practice assimilate themselves to each other.

“ On the other hand, it has been suggested that we might dispense with the intervention of notaries public in any cases under this Act, and might adopt a provision of the recent English Statute, which says that where the services of a notary public cannot be obtained ‘any householder or substantial resident of the place’ may act in his stead. If we had not established a liberal supply of local notaries public under the power to which I have referred, some such provision would be doubtless very useful. As it is, I think it would be desirable to avoid the use of a phrase so pregnant of litigation as the phrase ‘substantial householder’. I believe that there is a reported case in which the question whether a village tailor was or was not a substantial householder within the meaning of an Indian Regulation was fought up to the Privy Council. I have not refreshed my memory of the case by looking up the report, and therefore I am not in a position to say how far the argument turned on the question whether the tailor represented only a fractional part of a householder. But, however that may be, the case is sufficient to show that the use of any such phrase might provide an inconveniently wide scope for the exercise of forensic ingenuity.

“ These are the only points in connexion with the amended Bill to which I need direct the attention of the Council, except perhaps a suggestion, which

has proceeded from the Bank of Bengal, that we ought to declare a particular section of the Contract Act inapplicable to negotiable instruments. This is the section (45) which enacts that—

‘When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.’

“It has been suggested that this section might have an inconvenient effect if applied to joint promissory notes and bills of exchange. I am not aware of any case in which it has been held to be so applicable, and, if the question were to be argued, I am disposed to think that the application of the section would be held to be sufficiently limited by the express saving of any usage or custom of trade, and by the provisions of the law with respect to partners, trustees and executors. But, however this may be, I think that, if any amendment of the law in the direction suggested by the Bank of Bengal is necessary, it might be more appropriately embodied in a Bill for amending the Contract Act, since there may well be other cases besides those of negotiable instruments from which the applicability of this section ought to be excluded.”

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

TRANSFER OF PROPERTY ACT, 1882, AMENDMENT BILL.

The Hon'ble Mr. ILBERT also moved that the Report of the Select Committee on the Bill to amend the Transfer of Property Act, 1882, be taken into consideration. He said:—

“This is another Bill for amending one of the codifying Acts, and its main object is to give a more workable form to the power of exemption which is contained in one of the introductory sections of the Transfer of Property Act.

“I explained so fully on the occasion of obtaining leave to introduce this Bill the reasons which made some amendment of this section necessary, that I need not recapitulate them now, and I will content myself with stating the conclusions to which the Select Committee have come as to the form which the amendment should assume.

1885.]

[Mr. Ilbert.]

“With regard to the exemption from those sections which require certain instruments to be registered, we are clearly of opinion that the exemption should be local, as proposed by the Bill.

“Then comes the power to exempt from section 41, which deals with transfers by ostensible owners. With regard to this section, there is much difference of opinion among those whom we have consulted, first, as to whether there should be any exemption from this section at all, and then as to the form which the exemption, if any, should assume. The conclusion to which we have come is that the section merely embodies a rule of equity which the Courts should follow, and which they probably would follow, even if it were not expressly enacted by the Act. We think, therefore, that it should be in force wherever the Act is in force, and that no power to exempt from it is necessary or desirable.

“The last clause of the Bill as introduced related to a section which declares in what cases a power of sale or a mortgage is to be valid—a section which was the subject of much discussion at the time when the Transfer of Property Bill was being framed, and with respect to which the views of the Law Commission, to whom the Bill was referred at an early stage, were not identical with those which ultimately prevailed in the Select Committee of this Council and in the Council itself. The conclusion of the Committee and the Council was that such powers of sale should be declared valid only to the extent to which they were previously valid in accordance with general usage. And to give effect to that view the Bill made the power of sale valid in cases where the mortgage was a mortgage in the English form and neither the mortgagor nor the mortgagee was a Hindu, a Muhammadan or a Buddhist, and also in cases where the mortgaged property was situate within the towns of Calcutta, Madras, Bombay, Karáchi or Rangoon. Whether the particular conclusion at which the Committee and the Council then arrived was right or not I do not propose to discuss. There is a great deal to be said on both sides of the question, but the Select Committee on the present Bill thought they ought not to re-open the discussion or to alter the general lines on which the section is framed. We think it will be sufficient so to amend it as to make its meaning clear and its provisions more logically complete.

“In the course of the discussions on the Bill it was suggested to us that one of the sections of the Act might possibly be so construed as to impress the character of transferability on those occupancy-rights and other similar interests in land which by existing law or custom are not transferable. It was certainly not the intention of the framers of the Act to make by it any change

in the law on this point, and we have added to the amending Bill a clause for the purpose of removing any doubts on this head."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

INDIAN CONTRACT ACT, 1872, AMENDMENT BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to amend section 265 of the Indian Contract Act, 1872. He said :—This section provides as follows :—

' In the absence of any contract to the contrary, after the termination of a partnership, each partner or his representatives may apply to the Court to wind up the business of the firm, to provide for the payment of its debts, and to distribute the surplus according to the shares of the partners respectively.

' *Explanation.*—The Court in this section means a Court not inferior to the Court of a District Judge within the local limits of whose jurisdiction the place or principal place of business of the firm is situated.'

" The section has been the subject of various decisions by the Calcutta and other High Courts, but, whatever interpretation is correct, it is clear that its effect is to bring on the files of District Judges a number of unimportant suits which can be equally well adjudicated by the subordinate Courts. The Calcutta High Court has brought to notice that the section has caused the District Judges' Courts to be swamped with a number of petty cases, and has suggested that it should be so amended as to give jurisdiction in this class of cases, to some of the subordinate Courts; and it is with the object of making this amendment in the law that the Bill I am now asking leave to introduce has been prepared."

The Motion was put and agreed to.

INDIAN PORTS ACT, 1875, AMENDMENT BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to amend the Indian Ports Act, 1875.

ACT XXII OF 1881 AMENDMENT BILL.

The Hon'ble MR. QUINTON presented the Report of the Select Committee on the Bill to amend Act XXII of 1881.

OUDH ADDITIONAL JUDICIAL COMMISSIONER'S BILL.

The Hon'ble MR. QUINTON also moved that the Bill to provide for the temporary appointment from time to time of an Additional Judicial Commissioner for Oudh be taken into consideration. He said :—

“When introducing this Bill a fortnight ago, I explained to the Council the circumstances which called for legislation on the subject, and the urgent necessity which at present exists for strengthening, at least temporarily, the Court of the Judicial Commissioner of Oudh. Since then I have received a telegram from the Lieutenant-Governor and Chief Commissioner, in which His Honour expresses an opinion that the state of judicial business in the province renders it both urgent and important, in the public interest, that the appointment of an additional Judicial Commissioner should be legalised without delay.

“I therefore feel it incumbent on me to ask the Council to take the Bill into immediate consideration with a view to passing it to-day.

“It is very short, consisting only of four sections.

“Section 1 is introductory, and brings the Act into operation at once. Section 2 enables the Local Government, from time to time, with the previous sanction of the Governor General in Council, to appoint any person it thinks fit to be an Additional Judicial Commissioner, and fixes the term of office at the pleasure of the Local Government. Section 3 empowers the same Government to prescribe the jurisdiction and powers of the Court of the Judicial Commissioner to be exercised by the Additional Judicial Commissioner, and the Judicial Commissioner to divide the work of the Court in accordance with such general directions. And, lastly, section 4 makes applicable to the Additional Judicial Commissioner, while exercising such jurisdiction and powers, all enactments applicable to the Judicial Commissioner.

“The effect of the amendment to section 3 which I shall in the next Motion ask the Council to accept is to enable the Additional Judicial Commissioner to give assistance to the Judicial Commissioner, not merely in the trial of civil appeals as provided by the Bill, but also in the disposal of revenue and criminal cases.

[*Mr. Quinton.*]

[30TH JANUARY, 1885.]

“The reasons for the alteration will be found in a letter from the Lieutenant-Governor, printed as paper No. 1 relating to the Bill, in which Sir A. Lyall points out that it is very desirable that the Additional Judicial Commissioner should be able to assist the Judicial Commissioner in any branch of the work of the Court which the Judicial Commissioner may find convenient. For instance, if the latter officer be engaged in trying a protracted civil suit, it would be to the advantage of public business if his colleague could deal with criminal references which require punctual attention.”

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also moved that, in section 3 of the Bill, for the words “the Oudh Civil Courts Act, 1879,” the words “any enactment for the time being in force” be substituted.

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

The Council adjourned to Friday, the 6th February, 1885.

R. J. CROSTHWAITE,
Offg. Secy. to the Government of India,
Legislative Department.

FORT WILLIAM;
The 5th February, 1885. }

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 6th February, 1885.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., P.C., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble Amír Alí.

The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.

The Hon'ble H. J. Reynolds.

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

The Hon'ble Peári Mohan Mukerji.

The Hon'ble H. St.A. Goodrich.

INDIAN PORTS ACT, 1875, AMENDMENT BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to amend the Indian Ports Act, 1875, be taken into consideration. He said :—

“ This Bill originally consisted of a single section, the effect of which was to authorise payment to port-officers of pensions out of the port-fund. We have slightly amended this section so as to meet the case of an officer who has earned his pension partly from the port and partly from service elsewhere, and we have added sections amending the Ports Act in one or two other particulars. We have removed a technical difficulty about the publication of certain orders under the Act. We have enabled the port-authorities to dispense with the levy of separate hospital-dues, and, instead of levying them, to contribute

money from the port-fund-account for the support of hospitals for seamen or for providing sanitary superintendence and medical aid for the shipping and seamen belonging to ships in port. This amendment was suggested by the Bombay Government, and has received the approval of Calcutta and Rangoon. I understand that at Madras no separate hospital port-dues are levied, and consequently no change in the law is required there. Lastly, we have raised the maximum which is at present fixed by law for port-dues levied in the Cuttack ports. We have done this at the request of the Bengal Government, who represented that the present port-dues are not sufficient to meet the expenses of the port-establishments. It will be understood that the Bill does not of itself raise the dues leviable in the Cuttack ports, but it enables the Bengal Government to raise them if it finds it necessary to do so."

The Hon'ble MR. REYNOLDS said:—"I wish to say a few words as to section 5 of the Bill, because the Bengal Chamber of Commerce, in a letter addressed in August last to the Local Government, expressed itself as not altogether satisfied with the proposal to increase the port-dues in the Cuttack ports in the manner authorized by the Bill, and any representation from the Bengal Chamber of Commerce always receives the fullest consideration at the hands of His Honour the Lieutenant-Governor. The letter of the Chamber was not altogether opposed to some increase of the port-dues, but it objected to so large an increase as the Bill proposes, and it suggested that it might perhaps be possible to balance the receipts and charges by effecting some reduction in the expenditure. The present rate, which is six annas per hundred maunds, may be taken as about equivalent to one anna and eight pies per ton, and under the Bill it is proposed to give power to raise the rate to four annas per ton. That is, no doubt, a considerable increase, but it is the same rate as is levied at other ports, and I may observe that it is a maximum rate, and it does not follow that the maximum amount will be levied; indeed, I may say that it is not the intention of the Government to use the full power conferred by the Bill unless it is found absolutely necessary to do so. The Government has very carefully considered the possibility of reducing the charges instead of raising the receipts, but enquiry has shown that the present charges will not admit of reduction, and it does not seem reasonable that the provincial revenues should be laid under contribution, year after year, to meet a continually recurring deficit on account of the Balsore ports.

The Motion was put and agreed to.

The Hon'ble Mr. ILBERT moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

1885.]

[Mr. Quinton.]

ACT XXII OF 1881 AMENDMENT BILL.

The Hon'ble MR. QUINTON moved that the Report of the Select Committee on the Bill to amend Act XXII of 1881 be taken into consideration. He said :—

“ The Select Committee has had before it reports from all the Local Governments to whose territories this Bill, if passed into law, will extend, and has duly considered the suggestions received from those different sources.

“ The alterations made, in consequence, in the Bill as introduced, which I shall now briefly explain for the information of Council, are not numerous.

“ In British Burma there is a local collector of revenue styled a Thugyi. These men give much assistance to District-officers in administrative affairs generally, and more especially in all matters connected with the suppression of crime.

“ They can, under the present law, be appointed Excise-officers by the Collector of the district; but as they are not in receipt of the monthly salary prescribed by sections 28 and 29 of Act XXII of 1881 it may be held that they cannot exercise the powers of arrest and search referred to in those sections. Their remuneration is paid in the shape of a percentage on their collections, and these percentages range from Rs. 1,000 to Rs. 2,000 per annum; so that, if the amount of remuneration be accepted as a criterion of respectability, they are much superior in that respect to officers drawing Rs. 10 per mensem.

“ The Chief Commissioner considers it desirable that when appointed Excise-officers they should exercise the powers described in sections 28 and 29 of the Excise Act, and with this object we have altered the wording of the sections as provided in sections 1 and 2 of the Bill.

“ We have also, by section 2 of the Bill, made an addition to section 29 to provide for the case, which it is proposed to legalise, of the Excise-officer who makes the search being a Police-officer. It is obviously superfluous to require that a second Police-officer of the prescribed grade should be present at the search in such cases.

“ Section 3 of the Bill embodies the provisions of the Bill as introduced with the following modifications :—

“ The power of stopping and detaining persons carrying illicit drugs and liquors may, we believe, be safely and with advantage conferred on all

Police-officers. This was the law in force until 1881; it is the view of the existing law which has until lately been acted on in all provinces; and it is in accordance with the powers exercised by constables in all cognisable criminal cases, however petty. We have drawn section 34A so as to effect this object.

“The more important powers of arrest and search described in sections 28 and 29 we have restricted as proposed in the Bill, with the addition of officers in charge of police-stations and sergeants. The former class of officers has been added, at the request of the Burma Administration, to cover cases where first class constables may be left in charge of police-stations, and the latter to make the nomenclature of the Bill correspond with that of the Panjáb police-force. Officers known elsewhere as head-constables are there styled sergeants.

“The Government of the North-Western Provinces and Oudh brought to our notice that the word ‘complaint’, used in section 47 of the Excise Act, might be held to mean a complaint as technically defined in the Code of Criminal Procedure, and to exclude the report of an Excise-officer such as is prescribed in section 32 of the Act. In order that there may remain no doubt on this point, we have re-drafted section 47 of the Excise Act in the manner provided by section 4 of the Bill.”

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

The Council adjourned to Friday, the 13th February, 1885.

FORT WILLIAM;
The 13th February, 1885. }

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India,
Legislative Department.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 13th February, 1885.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B.,
G.C.M.G., P.C., G.M.S.I., G.M.I.E., *presiding*.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble Mahárája Luchmessur Singh, Bahádur, of Durbhunga.

The Hon'ble J. W. Quinton.

The Hon'ble T. M. Gibbon, C.I.E.

The Hon'ble Amír Alí.

The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.

The Hon'ble H. J. Reynolds.

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

The Hon'ble Peári Mohan Mukerji.

The Hon'ble H. St.A. Goodrich.

BENGAL TENANCY BILL.

The Hon'ble SIR STEUART BAYLEY presented the further Report of the Select Committee on the Bill to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal. He said :—

“The Report and the minutes of various members of the Committee expressing their opinions on special portions of the Bill will be published as a supplement to the Gazette. There being no Motion before the Council, I am precluded by the rules from making any remarks on this occasion; only with Your Lordship's permission I wish to inform honourable members that I propose

BENGAL TENANCY.

[*Sir Stewart Bayley.*] [13TH FEBRUARY, 1885.]

this day fortnight to move that the Report be taken into consideration, and I will ask the attention of members of the Council to Rule 28, which says that all amendments should be in the Secretary's hands three days before the Motion is made."

The Council adjourned to Friday, the 20th February, 1885.

R. J. CROSTHWAITE,
} *Offg. Secretary to the Government of India,*
} *Legislative Department.*

FORT WILLIAM;
The 13th February, 1885.

*Abstract of the Proceedings of the Council of the Governor General of India,
assembled for the purpose of making Laws and Regulations under the
Provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at Government House on Friday, the 20th February, 1885.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B.,
G.C.M.G., P.C., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir. A. Colvin, K.C.M.G., C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble R. Miller.

The Hon'ble Amír Alí,

The Hon'ble H. J. Reynolds.

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

The Hon'ble Peári Mohan Mukerji.

The Hon'ble H. St.A. Goodrich.

INDIAN CONTRACT ACT, 1872, AMENDMENT BILL.

The Hon'ble MR. ILBERT introduced the Bill to amend section 265 of the Indian Contract Act, 1872, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Quinton, the Hon'ble Rao Saheb Vishvanath Narayan Mandlik, the Hon'ble Mr. Goodrich and the Mover. He said :—

“I have already explained the object for which it is proposed to amend this section of the Contract Act, and, after looking at the cases decided on the section, I am disposed to think that the best way of effecting that object will be to omit the *explanation*, and simply to declare that applications under the section must be made by suit. The effect of thus amending the Act

will be to bring applications under the section within the operation of the general rules which regulate the jurisdiction of the Courts with respect to the value of the subject-matter of suits."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

PÁNCH MAHÁLS LAWS BILL.

The Hon'ble MR. ILBERT also moved that the Bill to amend the law in force in the Pánch Maháls be taken into consideration. He said :—

"This Bill has been considered by the Bombay Government, and the only amendment which they suggest is the addition of one Act to the schedule of enactments which are not to apply to the Pánch Maháls. I propose to adopt that amendment, and also to make another amendment which will postpone for two months the date on which the Act is to be brought into operation."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that in the preamble and in sections 2, 3 and 4, for the words "the first day of March, 1885" the words "the first day of May, 1885" be substituted.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that in section 1, "1885" be substituted for "1884".

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the second part of the schedule appended to the Bill be amended by the addition thereto of Bombay Act V of 1862 (*An Act for the preservation of the Bhágdári and Narwádári Tenures*).

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

1885.]

[*Mr. Hope.*]

LAND ACQUISITION (MINES) BILL, 1885.

The Hon'ble MR. HOPE moved for leave to introduce a Bill to provide for cases in which Mines or Minerals are situate under lands which it is desired to acquire under the Land Acquisition Act, 1870. He said:—

“Our old legislation with regard to the acquisition of land for public purposes in India contained certain provisions which to a limited extent provided for the object which the Bill I have the honour to ask leave to introduce is intended to effect. When, however, the Land Acquisition Act was revised in 1870, the provisions to which I refer, which were contained in the Act of 1863, were omitted altogether. I have not been able to find as yet in the records any definite reasons assigned for such omission. At the same time I am inclined to infer that the omission probably arose from two causes, firstly, that at that time all minerals in India were supposed to be the property of the State, and secondly, that probably there were no minerals then thought of any special value except coal and salt, and the State had at that time got practically whatever powers were then necessary for it in respect to one or the other. On these grounds it seems probable that the matter was not considered to require any special provision of law at all. However that may be, both those reasons, if they were indeed the reasons which led to the omission I have referred to, have now to a great extent disappeared. As to the second reason, we find, fortunately I think I may say, that there is now some call for legislation in the matter; for the scheme of railways which we have adopted is gradually extending across territories where there is a certain amount of coal to be found; our lines are traversing coal-fields not only in Raneegunge, but in the hitherto unopened tracts of Chota Nagpore, the Central Provinces and Orissa. On the other hand, we find with regard to the first reason that it has been held since 1863 or 1870 that the State is not ordinarily the owner of minerals in permanently settled estates, and consequently that, if we require lands for railways in estates which are permanently settled, we have to acquire and deal with rights to minerals as well as rights to the surface of the soil. I am not coming to the Council, as may be supposed from this preamble, in order to ask for leave to take away all these private rights from the owners of permanently settled estates; on the contrary, I am coming for power to leave them alone. The defect in the present law which I desire to remedy is that we are practically obliged to acquire the whole rights, or to leave alone all rights, in any land we have to acquire. This is exactly what we do not want to do. We do not wish to deprive the owners of permanently settled estates of lucrative property which they may possess and which would be of no use to us. On the other hand, we do not desire to incur the loss to our finances which we should undoubtedly

suffer by the heavy price which we should have to pay for such proprietary rights. We therefore propose to bring in a new measure to remedy these defects.

“ This measure will not be exactly on the lines of the old legislation which existed previously to 1870, because that old law, Act XXII of 1863, was imperfect in one respect ; that is to say, it left it entirely doubtful whether, in the event of taking land which was underlaid with minerals, it was necessary to compensate the owner for the full value of the minerals there, or only for any amount of loss which might be incurred by him in the case of a railway passing over his land. In the new law we propose to follow the English law in the main, and to reserve to the State the option either to take the whole of the property, including the minerals underground, or to leave the owner to work the minerals below as he pleases, or to impose suitable restrictions upon his working with a view to prevent the surface from falling in, and to compensate him for any loss which such restrictions may entail on him.

“ I trust these explanations will be sufficient to justify the application which I have made to the Council to-day. If I am permitted to introduce the Bill, I shall then be able to explain the details rather more fully.”

The Motion was put and agreed to.

The Council adjourned to Friday, the 27th February, 1885.

R. J. CROSTHWAITE,

FORT WILLIAM ;
The 25th February, 1885. }

*Offg. Secretary to the Government of India,
Legislative Department.*

*Abstract of the Proceedings of the Council of the Governor General of India,
assembled for the purpose of making Laws and Regulations under the
provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at Government House on Friday, the 27th February, 1885.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B.,
G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble T. M. Gibbon, C.I.E.

The Hon'ble R. Miller.

The Hon'ble Amír Alí.

The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.

The Hon'ble H. J. Reynolds.

The Hon'ble Rao Saheb Vishvanatha Narayan Mandlik, C.S.I.

The Hon'ble Peári Mohan Mukerji.

The Hon'ble H. St.A. Goodrich.

The Hon'ble G. H. P. Evans.

The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Durbhunga.

The Hon'ble J. W. Quinton.

LAND ACQUISITION (MINES) BILL, 1885.

THE Hon'ble MR. HOPE introduced the Bill to provide for cases in which mines and minerals are situate under lands which it is desired to acquire under the Land Acquisition Act, 1870, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Ilbert, Sir Steuart Bayley and the mover.

[*Mr. Hope; Sir A. Colvin; Sir S. Bayley.*] [27TH FEBRUARY,

He said:—"Considering the other important business which is before us on the present occasion, I think my colleagues will probably consider it sufficient if I refer them to the Statement of Objects and Reasons for a detailed explanation of the provisions which the Bill contains, without detaining the Council for the purpose of going into the various points in detail."

The motion was put and agreed to.

The Hon'ble MR. HOPE also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English, and in such other languages as the Local Governments think fit.

The motion was put and agreed to.

INDIAN SECURITIES BILL, 1885.

The Hon'ble SIR A. COLVIN moved for leave to introduce a Bill to amend the law relating to Government securities. He said:—"The main object of the Bill is to legalise and conform the law to the practice obtaining in England, and actually existing in the Indian Public Debt Offices, both before and after the passing of the Indian Contract Act, which recognises the right to sue, in cases where our securities are held jointly, by one or more survivors in the event of the decease of one or other of the original holders. Doubts have been raised as to whether this practice was in conformity with the provisions of section 45 of the Indian Contract Act. To remove those doubts this measure is about to be brought forward. Advantage will be taken of the occasion to introduce provisions enabling Government officers holding Government securities for public purposes to endorse as such, and not as individuals, the securities they may hold, and to have securities similarly endorsed to them; and, finally, advantage will be taken of this opportunity to conform the provisions of the law to the existing practice as to the issue of fresh securities in place of those which, from being overladen with endorsements, can no longer be conveniently endorsed; and also as to the renewal of lost or destroyed securities, provision being made for the protection of the Government against claims preferred to the securities in place of which renewed securities have been issued."

The motion was put and agreed to.

BENGAL TENANCY BILL.

The Hon'ble SIR STEUART BAYLEY moved that the Reports of the Select Committee on the Bill to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the administra-

1885.]

[*Sir S. Bayley.*]

tion of the Lieutenant-Governor of Bengal be taken into consideration. He said:—

“ In moving that the Report of the Select Committee be taken into consideration, I do not propose to go behind what passed at the second reading of the Bill. Such questions as whether legislation was necessary at all, and whether legislation was barred by the terms of the Permanent Settlement, I consider to have been then decided, after sufficiently exhaustive discussion, and I, at least, shall not re-open them. What I propose to do is to review the work of the Select Committee; to show the nature and the reasons of the principal alterations they have made, and how far the Bill, as altered, is likely to succeed in securing those results which, in imposing on us our laborious and absorbing task, the Legislative Council had in view.

OBJECT OF
SPEECH.

To review the work
of Select Committee.

“ Before doing this, however, I may be permitted to say a few words as to the constitution and labours of the Committee. It was particularly strong in numbers, consisting of more than one-half of all the members of the Council. It comprised the selected representative of the Bengal zamíndárs, and though the death of our lamented colleague Rai Kristodas Pal Bahadur in the middle of our discussions was a grievous loss to them, and indeed to all of us, yet their interests could hardly have found a better representative than in his successor, who with inflexible constancy and even a more perfect knowledge of detail than his predecessor, contested every inch of ground, and displayed a temper and ability which showed how wisely the British Indian Association had made their selection. The zemíndars of Behar were specially represented, so also were the planters. Several of our members are of the legal profession, and in the course of that profession had acquired an intimate knowledge of the problems with which we had to deal. As will be seen from the published minutes attached to the Report, the cause of the raiyats had the advantage of the most powerful and most sympathetic advocacy. Nor were we deficient in the light that comes from a knowledge of the working of cognate systems in other provinces, and we had a further advantage in the assistance which a long experience in the task of comparing and tabulating the statistics of all the provinces of this vast empire enabled one of our members to extend to us.

Constitution of the
Committee.

“ The Committee sat 35 times last session, and 28 this session, each meeting lasting generally 3½ hours. The correspondence they had to study fills a shelf some 3½ feet in length, and, whatever charge may be brought against them, that of want of industry is certainly not sustainable. I make these remarks not merely that I may take this opportunity of expressing the thanks

Work of the
Committee.

of the Government of India to the Committee for their unwearying labours and the great assistance they have given, but also in order to show to the Council that in a Committee so constituted the decisions of the majority may be accepted as at least *prima facie* likely to be sound, and as certainly the result of an impartial and most earnest desire to do justice in the clash of conflicting interests.

Order of subjects.

“In what I have now to say I shall follow, as far as may be, the order of subjects as they come in the Final Report of the Select Committee, though I must take you back by reference occasionally both to the Intermediate Report and to the Statement of Objects and Reasons which explained the original provisions of the Bill. And in this order the first point I have to notice is in regard to the definition of “estate” and “proprietor”. It will be observed that the main alteration we have made is to add to the definition of “estate” words expressly including Government *khas mehals*, and unregistered *lakhi-raj* lands, and we have omitted a proviso that appeared in Bill No. II. The insertion of the unregistered revenue-free lands is intended to meet a real omission in the first draft of the Bill. The insertion of Government estates is intended to clear up a singular misapprehension as to its being the intention of Government to exclude its own estates from the operation of the Bill—a misapprehension which, though entirely erroneous, has given rise to a good deal of criticism on our good faith.

Definition of “proprietor”.

Insertion of Government of khas mehals.

Original definition applied to all lands entered in Government registers.

And therefore to all Government estates.

Explanation of proviso.

Since omitted.

“The original definition made the Bill apply to all land entered in any of the general registers of Government, and if any one will turn to section II, clause V (Vol. 1, page 137) of the Bengal Board’s Rules they will see that all *khas mehals* and *raiyatwari* tracts, all lands even temporarily occupied by Government for public purposes, and all waste and other lands not assessed to revenue have to be entered in these registers. It is difficult to understand how any one should suppose in these circumstances that it was the intention of Government to exempt their own estates. I can only suppose that the proviso which appeared in Bill No. II, referring to certain Government taluks, was not fully understood. That proviso had reference to some *noabad* taluks in the Chittagong district, which, though for revenue purposes treated as tenures were for convenience sake entered in the register of estates, and it was in order to prevent a wrong deduction as to the nature of these tenures being founded on the fact that they were entered in the estate register that a late member of the Bengal Board of Revenue asked for the insertion of the proviso. For the purposes of this Bill it was not wanted, and it has accordingly been struck out,

1885.]

[*Sir S. Bayley.*]

but I repeat emphatically that it was never the intention of Government to exempt its own estates from the substantive provisions of this Bill, and out of abounding caution we have inserted words which can leave no doubt on this point.

“Coming now to the chapter headed Classes of Tenants, we have, as stated in the Intermediate Report of the Committee, attempted to describe rather than to define the various classes. It was urged upon us very strongly by Mr. Dampier, that the most serious practical difficulty arose from the impossibility of deciding whether a man was a tenure-holder or a raiyat, and that it was necessary to give the Courts and Settlement Officers some assistance in coming to a decision, even drawing, if necessary, an arbitrary line founded on the extent of the holding, and we have accordingly provided that where local custom was not sufficiently clear upon the point the Courts should look to whether the land was originally taken for the purpose of direct cultivation by the holder, or for the purpose of indirect cultivation by settling raiyats on it, and that, further to assist the Courts in coming to a decision, there should always be a presumption that a tenancy of 100 bighas was a tenure and not a raiyati holding. The presumption of course is based on the fact that nowhere in Bengal does a man take such a large holding as 100 bighas with the object of cultivating more than a small portion of it himself, and the general opinion of the officers consulted is that the standard selected is a perfectly safe one.

Classes of tenants described, not defined.

Original object of the tenancy to be the test.

Presumption from 100 bighas.

“In Bill No. II, the presumption was made conditional on the person having actually sublet a portion of his holding, but it seemed to the majority of the Committee that, if the presumption arising out of the size of the holding has any validity at all with reference to the object of the initial taking, the question of whether an acre or two is subsequently at a particular time sublet, is quite irrelevant. Of course if a large portion or the whole of it is sublet, this fact affords an indication of the original object of the holder which the Court would take into consideration, but it seemed wiser not to clog the presumption, by making it depend on the sublease of an arbitrarily fixed proportion of the holding—a proportion which would, in practice, be very difficult to prove, and we have therefore left it to depend entirely on the size of the holding.

Condition as to subletting a portion omitted.

“In the chapter on tenure-holders we have left the substantive position of the tenure-holder as regards his liability to enhancement unchanged. We have however somewhat modified the provisions of the original Bill relating to limitations on enhancement, and to registration on transfer. Under the original Bill the Courts, if granting enhancement against a tenure holder, were

Tenure-holders. Substantive position unchanged.

bound to leave him not less than 10 per cent. and not more than 30 per cent. of his net rental. The minimum was subject to some alteration in the case of improvements made by the tenure-holder. The enhanced rent was also not to be more than double the previous rent, and was not to be again enhanceable for a period of ten years.

Limitations on
enhancement
omitted.

“ We have thought it expedient to retain the provision which says that the tenure-holder shall not be left with less than 10 per cent. of his net profits. But we have omitted the restriction which limited him to 30 per cent. of those profits, and on the other hand we no longer confine the enhanced rent to a sum equal to double the old rent.

What the Courts are
to look to.

“ It seemed to us expedient to leave to the Courts a wider scope for discretion in both directions. In laying down a maximum, there is a danger of what is intended as a final limit being adopted as an equitable standard laid down by the legislature, and thus becoming the general rule, and we were unwilling to offer to the Courts any inducement to take a royal road to a decision instead of giving the fullest consideration to what would be fair and equitable under the circumstances. We have now directed them to have regard not only to the improvements of the tenure-holder, but to the circumstances surrounding the original lease, such as whether it was a reclamation lease, whether it was given in consideration of a bonus, and the like, and then to settle a fair and equitable rent, and we have extended the term for which the enhanced rent is to be fixed, both in the case of tenure-holders and for occupancy raiyats from 10 to 15 years.

Registration of
transfers.

“ In regard to registration on transfer of tenures, this is what the Select Committee report :—

‘ We have, in sections 12 to 16 of the Bill, so far altered the system of the registration of transfers of, and successions to, permanent tenures as to provide merely for enabling the landlord to register such transfers instead of compelling him to do so.

‘ The Bill, in its previous stages, provided for a compulsory system of registration by the landlord. This, it was objected, would not work satisfactorily, especially as the landlords of many tenure-holders are poor and ignorant persons, having no regular office, and no means of establishing one or maintaining a suitable register. At the same time it was pointed out that the establishment of an official registry would confer a great benefit on all concerned, and especially on the landlords, who might, if such a registry were established, be allowed to realize their rents by the process of summary sale which is now available only in the case of a limited class of tenures.

‘ A Bill for the establishment of an official registry is at this moment before the Bengal Legislative Council, and the object we have set before ourselves in re-casting the portion of

1885.]

[Sir S. Bayley.]

our Bill now under consideration, has been to frame its provisions in such a manner as to secure to the Collector, who will be the officer entrusted with the preparation and maintenance of the official register, early and accurate information of all transfers and successions which may from time to time take place.

' We have not overlooked the fact that the substitution of official registration for registration in the landlord's sherista, would deprive the landlords of the fees which it was proposed to allow them under the Bill as originally framed, and which, it is believed, they commonly realize at present, though in most cases without any warrant of law. We think that the fees prescribed by the Bill in its earlier stages may well be paid to the landlord, even though he is to be relieved of the duty of registration.

' The provisions we have inserted in the Bill in order to give effect to these views are as follows :—

' First, as regards voluntary transfers (section 12), the simplest plan has appeared to us to be to require that every such transfer shall be registered under the ordinary law relating to the registration of assurances. It is understood that the Local Government will make all arrangements requisite for facilitating the registration of such transfers. The parties applying for registration will be required to pay to the registering officer "the landlord's fee" and a process-fee for the service of notice on the landlord. When the registration has been completed, the registering officer will forward to the Collector the landlord's fee and a notice of the transfer containing all necessary particulars, and the Collector will thereupon cause the landlord's fee to be paid to the landlord and the notice to be served upon him, at the same time taking any such steps as may be prescribed by the measure now pending before the Bengal Legislative Council for the entry of the transfer in his official register.'

" We have made similar provisions for securing notice being given to the landlord in cases of sale for an ordinary decree and of succession. In case of sale for arrears of rent there is no necessity for such notice.

" I come now to what I look upon as the most important part of the Bill— Occupancy-raiyata. Chapter V, which deals with occupancy rights, and on this subject I fear I shall have to ask your attention at some length. The main points are (1) Who is to have the occupancy-right? (2) What are to be the incidents of that right? (3) What rules shall regulate enhancement of the occupancy-raiyat's rent?

" A very full discussion of the first question will be found at pages 5 and 6 of the Statement of Objects and Reasons, the gist of which is summed up in the statement that the Bill as introduced in Council makes ' the acquisition of the status of the khudkasht, or as he is termed in the Bill the settled, raiyat, depend not on the holding of one and the same plot of land for 12 years, but on the holding of any raiyat land (whether the same or not does not matter) in the same village or estate for a period of 12 years Acquisition of the right.'

Presumption of status.

whether before or after the passing of this Act.' That is to say, the Bill originally proposed to continue all occupancy rights already acquired; to define as above the status of a settled raiyat, and to provide that the settled raiyat of a village or estate as thus defined should have occupancy rights in all lands which he might legally occupy in that village or estate. Bill No. II went a step further. The discussion in Council two years ago brought out the fact that whatever might have been the effect of Act X of 1859 as to the legal acquisition of occupancy rights, it was, in practice, exceedingly difficult to prove those rights. The proportion of persons having acquired occupancy rights was estimated at from 90 to 70 per cent. of all the raiyats in the country, but unfortunately, as was said in the course of the discussion, those rights were 'moral' rights, and it was a matter of extreme difficulty for the individual raiyat to enforce in his own case by legal proof the rights which were generally admitted to have accrued to the raiyat in the abstract. Acting on this view, the Select Committee introduced into Bill No. II the presumption which will now be found at section 20 (7) of the Bill before the Council. The presumption runs as follows: 'When it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for 12 years continuously held that land or some part of it as a raiyat.' The Committee justified it as warranted by the existing state of things in the Lower Provinces, and because, while the presumption tends to simplify litigation, it is one which the landlord can have no difficulty in rebutting where it does not hold good. This presumption the Committee desire to maintain, and the only change they have introduced during their late session in this part of the Bill is the elimination of the words 'or estate,' thus limiting the right to the village in which the raiyat cultivates. As this decision of the Committee has been very forcibly attacked by His Honour the Lieutenant-Governor and some other members of the Committee, it is right that I should explain to the Council the reasons which led me, as representing the Government of India, to vote with the majority on this occasion.

Elimination of the words "or estate."

Point noticed by the Select Committee.

"The inconveniences attending the retention of 'the estate' in the definition of settled raiyat was touched on in the Select Committee's Preliminary Report of last year, and the point was one of those referred by the Bengal Government for the opinion of its officers. The great majority of those officers were against the retention of the words. This fact will be found in the 23rd paragraph of the Bengal Government's letter of the 15th September last,

1885.]

[Sir S. Bayley.]

where also are given the reasons which led His Honour the Lieutenant-Governor to dissent from the opinion of that majority, and to insist on the extension of the status of settled raiyat to the estate as well as to the village.

“I have no doubt that in the course of the debate His Honour will do full justice to the arguments which are there so ably stated; but, put very briefly, they are these:—

“The expediency, he urges, of giving stability to the raiyat’s position is admitted on all hands. Now 95 per cent. of the raiyats are so poor that they cannot possibly cultivate land at any distance from their homes, or, in other words, hold land away from their own village. On the other hand, if a man can get his landlord to give him a holding in another village (and it is only with his landlord’s consent that he can obtain it), then it may be presumed that the landlord knows his man, and there is no sort of reason why he should not have the same stability of position in regard to his new land as he had in his old land.

Reasons urged by the Bengal Government for retention of the words.

“Now, if this were all that the definition involves, it would be difficult to contest the Lieutenant-Governor’s position, and I for one would very willingly accept it; but the word ‘estate’ really involves quite a different set of considerations from these. An ‘estate’ is, so far as this argument is concerned, an administrative fiction.

“It is simply the area registered in our books under one number, and liable to be sold as a single unit in case of arrears of revenue being unpaid. For rent purposes it has no meaning. It is not all the area owned by a landlord, for a landlord may have many estates. It is not the possession of a single landlord, for it may be divided among numerous shareholders. It may be part of a village, or it may be 100 villages. It may be the property of one man, or the property of 100 men. It may be managed direct by the landlord or indirectly by a number of agents, or it may, as in the case of the Burdwan Rájá’s estates, be let out into innumerable *patni* or permanent tenures (these tenure-holders subdividing it again), and in these circumstances what is one estate in the Collector’s books becomes, for rent purposes, several hundred different estates, the immediate owners or managers of which have no concern with one another, can see nothing of each other’s books, and know nothing of each other’s raiyats. The Burdwan estate is of course an exceptional instance from its size, but to a smaller extent the same thing happens all over the country, and it is on this point that the objection is most difficult to meet. The effect

Objections to retention of “estate”.

would be to say that a man having once acquired occupancy-rights in any part of an estate should retain those rights with respect to any land which he may in any way acquire in any other part of the estate. Now, an estate, as I have shown, may be, and frequently is, subdivided among numerous tenure-holders or numerous managers. Any of these men may perhaps be able to say if any particular person has settled rights in his own particular tenure, but he cannot possibly know this in regard to the other tenures of the estate. He may let a man into his village as a non-occupancy raiyat, and the latter can immediately turn round and say that having acquired occupancy-rights in a village twenty miles away belonging to another tenure-holder, he claims to have them also in his new land. Clearly the Lieutenant-Governor's argument, deduced from the landlord's ability to know the character of his own raiyats, does not apply to cases of this class, and from this point of view his position is not an easy one to defend. The only reason for retaining the word 'estate' in the definition is to prevent a landlord from shifting his raiyat's holding from one village to another within his estate and so breaking down the occupancy-right. Now to this argument the Lieutenant-Governor himself supplies the answer. He urges that 95 per cent. of the raiyats are so poor that they cannot hold land away from their own residence. This, if it shows that the danger to the landlord would not be great from retaining the word 'estate', also shows that the possibility of shifting raiyats, except within reach of their residence, is equally limited. The advantage to the raiyats of carrying with them the occupancy-right from one village to another within the same estate is very small, for it is shown that 95 per cent. of them are not in a position to take advantage of it, and the only raiyats who could take advantage of it, are those who have abandoned their own village, and its application in their case would be a misuse of the power and contrary to the proposed intention of the Bill.

Danger of shifting examined.

"It is possible, no doubt, that shifting may occur in exceptional instances, where a landlord has several villages in his own direct management within reach of the cultivator's residence, and where he is powerful enough. But in the case of a very powerful landlord, strong enough to do this and determined to break down the occupancy-right, I am afraid he will always find some door open, and it must be remembered that not only is the number of landlords who are in a position to do this very small, but also the number of tenants to whom the process can be applied is small also.

"I suppose that, when the Bill becomes law, nine-tenths of the tenants will have secure occupancy-rights in the land they cultivate, and of the re-

1885.]

[Sir S. Bayley.]

maining tenth it is but an infinitesimal portion that can be exposed to the danger above explained.

“On the other hand, as long as we confine the accrual of occupancy-rights to the village, we have an absolutely unassailable position. The *khudkasht* raiyat's rights in the village are independent of those of the rent-receiver, and it matters not among how many estates the village may be divided. The raiyat is a *khudkasht* raiyat of *that village*, and has by custom, as well as by old law, a right of occupancy in any land he may cultivate in that village without reference to whom he pays his rent; but when once with the object of stopping gaps we take up more ground and apply the same rule to the estate, our position is no longer defensible. Not only is the theory new and unsupported by prescription or sentiment, it is open to a variety of practical objections, and by taking extreme instances it can be made to appear hopelessly ridiculous. Looking, as I do, upon the danger involved to the raiyats on the one hand, by omitting ‘estate,’ and to the zamindárs on the other, by including it as for the most part of exceedingly small importance, I greatly prefer, for the above reasons, to omit it. I do not think any intermediate device, such as that of limiting the ‘estate’ to so much of it as is comprised in one pargana, or in one permanent tenure, or by extending the village to an artificial area within a fixed radius, would be found to work satisfactorily, and none of these suggestions wholly commended themselves to the Committee. I can only repeat my conviction that, though the danger of raiyats being shifted from one village to another within an estate is not wholly imaginary, it is not a serious danger, and that the provisions in the Bill, supplemented as they are by a working presumption, will sufficiently secure nine-tenths of the raiyats in their just right.

Advantage of confining the *khudkasht* rights to the village.

Intermediate devices.

“Turning now to the incidents attached to the right of occupancy, it will be seen that we have made a most important change in regard to one of these incidents—transferability. Instead of legalising it and regulating it by law, we have left it everywhere to custom. This change was too important to be made at the direct instance of the Select Committee. It has the approval and sanction of His Excellency the Viceroy in Council. I am at liberty to state that I personally adhere to the opinion I expressed in the first debate, to the effect that both in Bengal and Behar the custom has taken such deep root that it is desirable to legalise and regulate it, and that in both provinces this course would, in the long run if not in the immediate future, be attended by beneficial results both to the cultivators, and to the productiveness of the

Incidents of the occupancy-right.

Transferability.

My own adherence to it.

country, and so far I sincerely regret the decision arrived at. But I am bound to admit, apart from the arguments directed against the principle of transferability,—arguments founded on injury to the landlord, expropriation of the raiyat, and rack-renting of the actual cultivator,—I am bound to admit that the Committee found immense difficulty in devising any practical scheme of pre-emption, any satisfactory safeguard against the dreaded money-lender, any equitable method of securing to the landlord the fee which he now gets in some parts of the country, without injuring the raiyats of other parts where they habitually transfer without payment of a fee, and that in view of these difficulties there is something to be said for leaving the custom to strengthen itself, and crystallise into a shape which may hereafter render its regulation less difficult than it is at present. We have, moreover, made it clear that where the custom of transfer without the landlord's consent has grown up, it is not the intention of the legislature in any way to interfere with it. In all other respects we leave transfer alone, and the Council will not have to consider the schemes of pre-emption, registration, and landlord's fees, which occupied so much of the time and attention of the Committee.

Difficulties in the way of giving effect to it.

Custom not interfered with.

Sub-letting.

“While we have dealt thus with transfer, we have not felt it possible to interfere with the long-established right of sub-letting.

“The existence of this right is admitted in section 6 of Act X of 1859, and the authorities consulted have almost unanimously declared that it is impossible now to interfere with it. Moreover, if the tendency to alienate, by way of transfer, is not allowed free play, it must, following the line of least resistance, force an outlet in sub-letting.

Scheme for restricting.

“To check this tendency, or at least to nullify its evil effects, was the intention of the provisions inserted as section 37 of our Intermediate Bill No. II. The scheme is explained fully in paragraph 27 of our Preliminary Report of last year. The main point of it was that an occupancy raiyat, who sub-lets more than half his holding, should be deemed to be a tenure-holder, and thus his sub-raiyats should be in a position to acquire rights of occupancy. But it was felt that this would envelope all rent-litigation in such clouds of uncertainty that it could only be permitted to take effect on the tenure being registered, and on this difficulty the whole scheme was wrecked. It was the very general opinion of the officers consulted, that in such cases registration would never be spontaneously sought for, and could not be enforced, and in view of the general objection taken to it on this score it was withdrawn. All that we have felt

Withdrawn.

1885.]

[Sir S. Bayley.]

ourselves able to do in this direction is to provide in a subsequent portion of the Bill (section 85), that a sub-lease, given without the landlord's consent, shall not be valid against him unless registered, and that no sub-lease for a term of more than nine years shall be registered. To such sub-leases we have given some protection which I shall refer to hereafter, but if it is really desirable to check sub-letting, about which I am personally very doubtful, it will certainly not be done by leaving the sub-lessee defenceless against his lessor.

Protection now given.

To attempt by legislation.

“The next branch of this subject is as to the rules that should regulate enhancement of an occupancy-raiyat's rent, and in this we have made some important alterations. Dealing, first, with enhancement by private contract, it will be observed that section 39 of the original Bill provided that such contracts should only be valid after being approved and registered by a revenue-officer, and the revenue-officer was not to accept any such contracts if the enhanced rent was more than 6 annas in the rupee above the old rent (these figures were put in tentatively), or more than one-fifth of the gross produce.

Enhancement of an occupancy-raiyat's rent

By private contract

As first proposed

“It was at an early stage obvious to the Committee that, even if the gross-produce limit was accepted as applicable to enhancements made by a Court, it was inapplicable as a test precedent to the registration of a contract.

Gross-produce limit

“It would have meant that in every case before a contract could be registered, an exceedingly complex judicial enquiry should take place—an enquiry, too, in which the Revenue-officer would be practically powerless, as the only evidence available would be that of the two parties, who were *ex hypothesi* in agreement as to the terms. The approval of the Revenue-officer, though, if confined to the form of the contract, strictly in accordance with the conditions of the Permanent Settlement, was felt, when extended so as to cover the question of the fairness of the conditions, to leave too wide a discretion to the Revenue-officer—a discretion, moreover, which, for the reasons above given, he would in practice be powerless to exercise.

Inapplicable to contracts.

“The registering officer will now, under the amended section, merely have to see that the agreement is not contrary to the express stipulations of the contract sections of the Bill, and that the raiyat understands it and is willing to enter in to it.

Approval of the registering officer no longer required.

“The Committee have, however, it will be seen, reduced the fractional limit within which enhancements can be made by contract to two annas in the rupee. About this clause there was great difference of opinion in the Committee.

Fractional limits considered.

“ On the one hand the objectors urge that it is useless putting in any such limitations at all, as if the raiyat agrees to pay the enhanced rent he will not care what the deed recites as to the amount of the previous rent, and while it will cause very serious embarrassment to scrupulous landlords, it will in no way serve as a check on the unscrupulous among them. It is also urged that any such check will force a landlord who wishes to enhance to take his raiyat in each case into Court, and then to demand more than he would otherwise be willing to accept—a process which is admittedly full of injury to the raiyat; that whereas if the landlord gets a decree for a sum more than two annas in the rupee on a test-case, instead of being able, as now, to make contracts on the same terms with his other raiyats, he will hereafter have to bring them one and all individually by separate suit into Court to confess judgment, and will thus obtain the same result only by a process far more expensive and far more demoralising to the raiyat. Another objection is that it altogether fails to meet the case of raiyats who are allowed to cultivate at specially low rents on condition of growing indigo or other special crop—a condition frequently used both by Government and by indigo-planters. When this condition comes to an end, there is no means of voluntarily adjusting the rent to the altered circumstances. The force of these arguments cannot be denied. On the other hand it is urged that $12\frac{1}{2}$ per cent. (a fraction which allows of the rent being enhanced by 25 per cent. every 30 years, by 100 per cent. in less than 90 years), is as much as a moderate landlord would ever be likely to ask as an addition to the rent; that it is quite reasonable, if the landlord wants a larger enhancement than this, to send him to the Courts for it, where he can prove its reasonableness; that the scheme encourages moderate enhancements, and discourages any large enhancements; that in some parts of the country, and precisely in those parts where the raiyats are least able to protect themselves, and most likely to agree, under pressure, to any terms which their landlords may impose, the rents are already so high that no sufficient margin for subsistence is left to the raiyat, and a single bad season suffices to break him down; and consequently that, in the absence of the checks which the Committee have removed from enhancement by the Courts, it is imperatively necessary for the very existence of the raiyat that enhancement by contract should be restricted within comparatively narrow limits. It is for the Council to say which of these views should prevail: for myself, I feel very strongly the necessity of some such check as the Bengal Government urge in regard to the over-rented parts of Behar, and whatever doubts there may be as to the efficiency in practice of this particular check, no competent observer can doubt the reality of the danger at which it is aimed.

1885.]

[Sir S. Bayley.]

“ We have inserted a section exempting from these conditions enhancements made *bonâ fide* on the ground of landlords’ improvements, because we look upon such enhancements in the light of interest on the capital expended, and we desire to encourage improvements. Exception in the case of landlords’ improvements.

“ One point remains under this head. We have, in order to lessen the harassment caused by frequent enhancements, provided that the enhanced rent, whether under contract or under decree of Court, should run for 15 years. This is an extension of the term (10 years) originally proposed by the Rent Committee, but it is only half of that (30 years) recommended by the Famine Committee. It is a very substantial boon to the raiyat, but is, we consider, perfectly just and necessary. Period during which fresh enhancement is barred extended to 15 years.

“ Coming now to enhancements by decree of Court, we have to consider the grounds on which enhancement can be demanded, and the considerations by which the Court should be guided in granting it. Enhancement in Court.

“ Under the Bill as first introduced, the great regulator of enhancements was intended to be the table-of-rates. This scheme, as I shall hereafter have to explain, has been eliminated from the Bill. Where a table-of-rates was not in force, the Bill provided for enhancement on the following grounds :—

- (1) the prevailing rate ; Three grounds.
- (2) increase of productive powers of the land ;
- (3) increase in average prices of produce.

“ Of these, the prevailing rate remains in a slightly altered form. Increase in the productive powers has been subdivided into the two efficient causes which alone can bring it about so as to justify in our opinion the enhancement of rent. All other cases seem to resolve themselves into cases, such as railways or canals, in which the landlord will get his enhancement by improvement of prices, or else into improvements effected by Government or by the raiyat. In these cases we do not see any just ground for enhancement. The two elements remaining are fluvial action and landlords’ improvements, and these two are maintained as grounds on which a landlord can demand an enhancement. The third of the old grounds—‘increase of prices’—has been retained and rendered, in my opinion, an exceedingly valuable instrument in the landlord’s hands for obtaining an equitable increase of rent.

“To avoid misapprehension, I may mention here that increase of area is treated separately, as we do not consider that increased rent, demanded on this ground is, properly speaking, an ‘enhancement’

Prevailing rate.

“Going back, then, to the first of these grounds of enhancement, it will be seen from the dissents that we have been vehemently urged to get rid of the prevailing rate altogether as a ground of enhancement. This was first moved by the Bengal Government in Committee last year and was not accepted. It was then referred for the opinion of the local officers, and the outcome of that reference was to show a very even balance between those who were in favour of abandoning it and those who were in favour of retaining it in such a form as to safeguard it from abuse. The reasons which led the Lieutenant-Governor to desire its abandonment are very forcibly explained in paragraph 40 (pages 25 to 28) of his letter of the 15th September. Very briefly summarised they are as follows. By the Permanent Settlement a raiyat's rent might, as a rule, be brought up to the pargana rate. The theory of the pargana rate was that it was a fixed and ascertainable entity, and this was in many parts of the country no doubt the fact. Where there was such a rate authoritatively established, it was fair, and was part of the old right of the State landlord, that the raiyat, when not protected by patta, should pay according to that rate. But the established pargana rate disappeared, and there is now no prevailing rate.

Reasons suggested for abandoning the prevailing rate.

“The landlords have been accustomed to take what they can get; rents are as often as not fixed in a lump sum on the holding and not differentiated according to the various qualities of the soil.

“In the absence of a real prevailing rate, the Courts have to take the average of the most prevalent rates in the vicinity. This means that A's rent is to be enhanced because B and C, being in debt, or otherwise at their landlords' mercy, have agreed, or pretended to agree, to pay enhanced rates. There is ample evidence that, apart from the natural effect of such competition-rents as have replaced customary-rents, bogus-rents are fabricated and kept on the jamabandis with a direct view to bring up the standard of the prevailing rate. Proposals have been made to exclude from consideration in determining the prevailing rate the effect of recent initial or competitive rents, but in the long run this would be impossible, and any way it does not cover the whole ground. These considerations led the Lieutenant-Governor to propose the absolute abandonment of the section, except where a prevailing rate is *established* by a Settlement-officer under Chapter X. The question was very fully discussed in

1885.]

[Sir S. Bayley.]

Committee, and the result is given in paragraph 20 of our Report, which runs as follows:—

‘ 20. We were unable to accept the proposal (IX) to abolish the prevailing rate as a ground of enhancement, inasmuch as this has, in one shape or another, been a ground of enhancement ever since the Permanent Settlement, and as it is the only means by which a landlord can remedy the effects of fraud or favouritism on the part of his agent or predecessors. In view, however, of the dangers which are said by competent authorities to arise from the artificial manufacture of rates, and from the very wide interpretation given to the term “places adjacent”, we have somewhat modified the terms of the section, have limited enhancement to the rate ascertained to be the prevailing rate *in the village*, and have required that this rate should be determined with reference to the rates actually paid during a period of not less than three years before the institution of the suit.’

Reasons which prevailed with the Committee for retaining it.

“I may have more to say on this subject when specific amendments are proposed, but for the present I will only observe that I believe in the amended section we have accurately retained the existing substantive law as interpreted by the Courts, and have only introduced the necessary safeguards above explained; we have, however, added a qualifying clause which would enable the raiyat to plead any sufficient reason there may be for his being allowed to hold on at a lower rate, have limited enhancement to those cases where the difference between the raiyat’s rate and the prevailing rate is substantial so as to prevent the section being used for purposes of harassment, and have indicated that where a local enquiry is necessary to ascertain the prevailing rate it should be conducted by a properly qualified Revenue-officer.”

Modifications in form.

“The next ground in the order of our Bill on which enhancement may be demanded is increase of prices. We have made some alterations under this heading, but I would first explain the scope of the section. The prices referred to are those of the staple food-crops, and are entirely independent of the particular crop which may happen at any particular time to be grown by the raiyat. We take the prices of staple food-crops as our standard both on grounds of principle and on grounds of convenience. Starting from the principle that existing rents, even if not corresponding strictly to soil-capacity, are yet to be considered fair and equitable, we hold it to be entirely unjust and contrary to good policy that they should be made to vary according to whether the raiyat at any particular time grows a special crop which may be fetching a high or a low price. We would not make the landlord’s rents depend on whether the raiyat is shrewd or the reverse, nor should they in any way in the existing condition of agriculture fluctuate with the fluctuations of foreign markets for such crops as jute, safflower, oilseeds, cotton, &c. What we do mean is, that

Increase of prices.

the landlord should not unduly suffer nor the raiyat unduly prosper from a permanent or long continued alteration in the value of money, and the only practical standard which can be applied to test this point is that of the price of staple food-crops.

Alteration in law to facilitate proof.

“We have made other alterations. Formerly, it was necessary for the landlord to prove to the Court when the rent was last fixed, in order to be able to enter into any comparison at all. The Court may under this Bill take any period during the currency of the rent that may be equitable and practicable for comparison. As a rule, in order to eliminate the effect of special seasons, decennial periods will be taken, but the Courts may, if necessary, substitute shorter periods. In order to facilitate the comparison, the Local Government will have to draw up, from the materials which are available to a certain extent for the last 20 years, statements of past prices, and in future to record prices accurately, publish them for criticism, and finally, after revision, publish statements of annual average prices which the Courts will receive as presumptive evidence.

Deduction to cover increased cost of production.

“We have, I think, by this scheme redeemed the pledge that Government would put the power of enhancement ‘on such a footing that it will readily be enforceable in practice.’ Before leaving this part of the subject, I must refer you to paragraph 18 of our Report, which deals with the deduction to be made to cover the effect of increased prices on the cost of cultivation. We are of opinion that the tendency in this country is for the cost of cultivation to increase in a higher ratio than prices. So far as the labour is done by the cultivator’s family or by labourers paid in grain (as is mostly the case in India), no benefit under this item can accrue to the cultivator from increase in prices. On the other hand, as population and prices have increased, pasturage has diminished; cattle are dearer to buy, dearer to keep, and less remunerative; manure is dearer, and so is fuel; and all these elements have to be taken into account. The Local Government proposed to deduct one-half for the increase of prices to cover the increased cost of cultivation; we recognised the impossibility of asking the Courts to solve the hopeless problem of increased cost in each case, and found it necessary to draw an arbitrary line. We have drawn it at one-third.

Remaining grounds of enhancement.

“In regard to the two remaining grounds of enhancement, namely, increase in productive powers caused by landlords’ improvements and by fluvial action, I would only mention here that we have provided facilities for at any time registering and recording landlords’ improvements, and we have decided that

1885.]

[Sir S. Bayley.]

under the head of fluvial action the Courts shall not take into account any increase which is merely temporary or casual.

“ Before leaving this subject of enhancements I must explain the alterations we have made on the limitation to be placed on enhancement. Limitations on enhancement.

“ The Bill, as originally introduced, provided that rents should not be enhanced so as to exceed one-fifth of the value of the gross produce, estimated in staple crops, nor should enhanced rent ever exceed double the old rent. In the Intermediate Bill (No. II) the gross produce limit had been rejected, and on the other hand the fractional limitations had been raised in one case to eight annas in the rupee, in others to four annas in the rupee. In the present Bill we have with the consent of the Bengal Government abandoned these fractional limitations without being able, as the Bengal Government wished, to restore the gross-produce limit.

“ I hope to be pardoned for touching on this point at some length.

“ The gross-produce limit was suggested by the Behar Committee in 1878, Gross-produce limit. who would have fixed it at one-sixth ; it found a place in the scheme of the Rent Commission and of Sir Ashley Eden’s Bill at the tentative figure of one-fourth ; it was one of our proposals to the Secretary of State, and was incorporated in the Bill as introduced into the Legislative Council, having then been changed at the instance of the Bengal Government to one-fifth. I may also say that, in respect to its principle, it had at that time on the whole been not unfavourably received by the zamíndárs. It was not therefore lightly excluded from the Bill by the Select Committee which sat last year, though grave doubts had been expressed in the debate in this Council, among others by His Honour the Lieutenant-Governor, as to the possibility of adopting any universal standard. The line of argument which led to its abandonment was somewhat as follows. Reasons for abandoning it. In all the previous stages of the discussion the machinery on which reliance had been placed for fixing a fair rent had been what is called the ‘ table-of-rates.’ This meant that a Revenue-officer should after due enquiry, classify soils over a given area, and, judging mainly by existing rent-rates fix a fair rate of rent for each class of soil. This enquiry would have involved by a minute process of investigation and experiment the ascertaining of what was for each class of soil the average gross outturn in staple crops. Thus ascertained, the figures would remain on record, and in suits for enhancement, &c., the Courts would only have to refer to them, and would thus be able, by applying the maximum test, to check any obviously unfair and unreasonable enhancement. Failure of scheme for table-of-rates.

“Before, however, the Committee had begun its labours, the Lieutenant-Governor had, at the instance of the Government of India, deputed selected officers to four or five experimental areas to ascertain if, as a matter of fact, rents had any such fixed and stable relation to classes of soil and produce as would enable the Revenue-officer to fix any table-of-rates based on existing facts. The result of the enquiry was disastrous to the scheme of a table-of-rates. It was found in almost each area subjected to enquiry not only that the multiplicity of rent-rates was almost inexhaustible, but that little relation could be traced between the existing rates and the quality of the soil. Consequently the table-of-rates as an adequate general machinery for regulating rents had to be abandoned, and the matter relegated to a great extent to the discretion of the Courts; and with the table-of-rates went the process of ascertaining and recording in an accessible form the average gross produce of each class of soil.

“This rendered it necessary for us to reconsider the expediency of retaining the gross-produce test as a maximum, and finally we decided, after some discussion, to abandon it both as unworkable and unfair. It is obviously unworkable in regard to private contracts, because it involves an enquiry which no registering officer can make before a contract is registered.

Impracticable in regard to contract.

“We held it to be unworkable by the Courts, because no Court has at its disposal the machinery for ascertaining the facts. The Lieutenant-Governor has traversed this argument by asserting that we do not want scientific accuracy; and such an estimate as we do require can be obtained by the assistance of a panchayat of raiyats who are presumably experts, and he points to the estimate made for grain-rents as an illustration. But the estimate in grain-rents is an estimate of the actual crop on the ground before their eyes—an estimate which is obtained by reaping and measuring samples. What the panchayat in the other case would have to ascertain is very different. They would have to say what a field which may be growing tobacco or sugarcane or opium would grow, not in any particular year, but over an average of years, if it was sown with staple crops. They or the Courts would then have to ascertain what would have been the price which the raiyat might have received for this produce over an average of 5 or 10 years. There is ample evidence to show that we have hitherto failed to ascertain with anything like accuracy what a bigha of land *does* produce over an average of years of the crop actually grown upon it: to ascertain what it might produce if some other crop were grown is an infinitely more difficult problem. Then the panchayat must be paid, which adds to expense,

Impracticable in regard to suits.

1885.]

[Sir S. Bayley.]

and there is always the danger of their opinion being in accordance with the longest purse.

“The unfairness of the test is of not less importance. The produce on two fields being the same, the maximum rent as limited by this test is the same; but on one of these fields it may cost twice as much to raise the crop as on the other: the margin left to the raiyat will in one case be sufficient; in the other it will not preserve him from starvation.”

Unfairness of the test. In relation to cost of cultivation and to area of holding.

“The relative size of the holding will similarly interfere with the applicability of the test. The same margin of produce per bigha left to the raiyat may be quite adequate where he holds 20 bighas, and may mean absolute starvation where he holds 4 only.

“Another very serious objection to the scheme is this: as population advances the average area of each man’s holding must diminish, and consequently the raiyat will require a larger proportion of the gross produce of his holding for the mere support of himself and his family. A less proportion will therefore remain as rent for his landlord. This is a necessary tendency while population increases at its present rate, and is, moreover, wholly confined to unscientific agriculture for subsistence. At the beginning of this century we have, in the Regulation I of 1804* for invalid jaghirs, a clear proof that Government then thought a cash rent equal to two-fifths of the gross produce a fair standard. To-day the Government of Bengal think one-fifth the maximum consistent with safety. If the Government of that day had been called on to fix a general standard they would have fixed it probably at two-fifths. It would be as dangerous for us to lay down now a permanent standard of one-fifth up to which, by the inevitable law which makes water find its level, rents would surely rise, as it would then have been for Government to lay down the standard at two-fifths. Until you can limit the amount of population to be fed you cannot with any safety say what proportion of the gross produce shall go to the landlord and raiyat respectively.”

Dangerous effect of fixing a permanent standard in face of increasing population.

“The Committee therefore, after full consideration condemned the principle of the gross-produce limit, because it left out of consideration other elements of equal or more importance in determining a fair rent. It took no thought of

Committee objected to its principle and doubted its efficiency in practice.

* Section IX (6):—

“The proprietor of the land shall be entitled to rent in the proportion of two-fifths of the annual produce, whether it be in kind or in money, as may be agreed on between the parties concerned in the adjustment. This rent shall not be liable to any variation and shall be paid to the zamindár or other proprietor.”

the cost of cultivation or of the size of the holding, or of the relative productiveness of it. They also objected to it in practice, because they thought the problem was one which the Courts could not solve, and because the attempt to solve it must add overwhelmingly to the cost of rent-suits—a burthen, which, as the *onus probandi* is on the raiyat, must inevitably fall on him in a large number of cases. So far we had not discussed the special fraction which it was proposed to introduce. Last autumn the Bengal Government again urged in the strongest terms the imperative necessity of retaining the gross produce limit as the only ultimate check on enhancements which might otherwise, under the prevailing-rate scheme, become destructive to the raiyat, and which certainly could not with safety be borne in Behar.

Consideration of test with reference to specific limit of one-fifth.

“The matter was again carefully considered, there being a decided readiness to accept the necessity of establishing a final check if one could be found, and this time the question was considered with reference to the special fraction proposed. The evidence as to average rates in each district is not such as can be altogether relied on, but, such as it is, it satisfied the Committee that the contention that a raiyat *can* not pay more than one-fifth of the estimated value of the staple crop is one which it is impossible to maintain. So far as it goes, and so far as the enquiries made by selected Revenue-officers last year bear upon the point, the evidence shows that in many districts which are not supposed to suffer from rack-renting, and ‘in Court of Wards’ estates as well, the raiyats *do* pay more than this proportion. But the evidence shows more than this: it shows that the relation of rent to gross produce varies so enormously (the Board give the result of their experiments as showing a variation from 67 per cent. to 7 per cent.), that it would be impossible to apply any one standard to all parts of the country, and that no sufficient remedy could be found in the direction of altering the limit to one-fourth or any other uniform fraction. It occurred to me that the test might perhaps be safely applied after a special enquiry in each district or smaller local area such as the table-of-rates contemplated, but this idea was not favourably received, and the Government of Bengal no longer press the scheme. Its loss however is made a ground of objection to the Bill as it stands; but fully as I recognise the real deficiency in the Bill of any adequate check on rack-renting in certain parts of the country, where enhancement is incompatible with the welfare, almost with the existence, of the raiyat, I must yet say that I consider the Committee were amply justified in refusing to accept a remedy which, in the shape proposed, was indefensible in theory, and would probably prove useless in practice.

Possibility of applying it after special enquiry.

Finally abandoned.

1885.]

[Sir S. Bayley.]

“The alternative fractional limits which had been inserted last year by the Committee, meanwhile, had been condemned by the Government of Bengal. Fractional limits condemned.

“As I have said in regard to tenures, there was a danger in establishing a maximum which would inevitably tend to become a standard of enhancement. They involved also the erroneous principle of adding most to the highest rent and least to the lowest; and we thought that, looking to the limitations which the grounds of enhancement carry within themselves, namely, in one case the rate prevailing in the village, and in that of prices the actual increase, minus one-third, it would be safer to trust to the discretion of Courts and to leave them within those limits to be guided by what is fair and equitable.

“We have therefore discarded the fractional limits on enhancement in Court, but I must repeat that it was the abandonment of these successive checks which led the Bengal Government to urge on us so strongly the necessity of strictly limiting enhancement by contract, and I trust this fact will be remembered when dealing with the limit of two annas in the rupee to which such contracts are subjected. And abandoned on condition of limitation of enhancements by contract.

“The only other point remaining in this chapter which I need notice, is the alteration which we introduced into the provisions for produce-rents in our preliminary Bill of last year. For the reasons given in paragraph 43 of the Intermediate Report, we eliminated the maximum that had been imposed on produce-rents, and we gave discretion to a Revenue-officer to refuse an application for commutation if opposed. We also added rules for his guidance in deciding what the equivalent money-rent should be. I need not take up your time at present by examining these rules. Produce-rents.

“Having dealt with the occupancy-raiyat, we must now turn to the non-occupancy-raiyat, who was called in the original Bill the ordinary raiyat. This name we have changed for reasons given by Mr. Reynolds and the Government of Bengal, to the effect that the non-occupancy-raiyat is not an ordinary raiyat, the ordinary or customary raiyat being the khudkasht. Non-occupancy-raiyats.

“Around this raiyat, whatever he be called, a severe conflict has arisen. Some of the minutes of dissent declare that a great deal too much has been done for his protection, others say that he is entirely unprotected. Mr. Reynolds says the Bill ‘affords him no protection as regards his rent, and that it does nothing to facilitate his acquisition of the right of occupancy.’ Babu Feári Mohan Mukerji says: ‘The rights given by the Bill to a non-occupancy-raiyat Differences of opinion.

will, to all intents and purposes, convert him into an occupancy-raiyat.' The Mahárájá of Durbhunga agrees with the latter, Mr. Amír Alí with the former. His Honour the Lieutenant-Governor also says the Bill 'leaves the non-occupancy-raiyat practically unprotected, and that on this point the Committee have departed from the intentions of the legislature and the conclusions of authoritative opinion.'

The Lieutenant-Governor's view.

"If this view were correct, I could only reply that among the conclusions of authoritative opinion which we have not departed from is one no less authoritative than that of His Honour the Lieutenant-Governor himself. In his speech on the second reading of the Bill in this Council, the Lieutenant-Governor, after urging that the Regulations of 1793 attempted only to protect the *khudkasht* raiyat, and that only so long as we dealt with his representative was our position unassailable, went on to say that 'it would be unreasonable and inequitable to extend the right of occupancy to every raiyat in the country,' and that he most cordially concurred in the maintenance by the Secretary of State 'of the distinction deeply rooted in the feelings and customs of the people, not only in Bengal but in most parts of India, between the resident or permanent, and the non-resident or temporary, cultivator.' 'It was to the resident raiyat and him alone', he says further on, 'that any ancient privileges and rights appertained' and accordingly when he came to deal with the details of the Bill, he said 'I am unable to accept the provisions of Chapter VIII (the ordinary raiyat) which deal with compensation for improvement and disturbance. I think too, though I myself have suggested a 20 per cent. (gross produce) limitation, that it may be impossible to enforce a uniform limitation of that kind in all parts of the province.'

Nature of protection afforded by the Bill.

"If then it were the case that we have given the non-occupancy-raiyat little or no protection, I might at least plead high authority for such a course; but I deny that it is the case, and I do not rest our defence on such authority. The line of action we have endeavoured to follow has been to keep, as directed by the Secretary of State, a marked distinction between the occupancy and non-occupancy raiyat, but to facilitate the acquisition by the latter of occupancy-rights, to give him some protection against undue enhancement, without barring the zamindar absolutely from all voice in the selection of his tenants or in the determination of their rents. One party of the dissentients would leave the non-occupancy-raiyat absolutely at the mercy of the zamindar without protection of any kind; the other party, in its endeavour to stop up every gap by which a zamindar could possibly find a means to injure his tenant,

1885.]

Sir S. Bayley.

would force the zamindar to retain for ever, subject to a heavy fine, any paikasht raiyat he had once admitted on the land, and would make the acquisition of occupancy-rights inevitable.

“The latter course would be contrary to the orders and intention of the Secretary of State, the former would be destructive to the stability of the cultivator and against the interests of public policy. I think that the attacks of the dissentients from two such opposite standpoints may fairly lead the Council to conclude that we have adopted a just and moderate view, and have taken the line which is fairest to the two contending interests.

“Under the existing law the non-occupancy-raiyat can get a patta at the rates agreed upon with his landlord. He can be ejected at the expiry of his lease, or, if without a lease, at any time after notice to quit. His rent can be enhanced as often as the landlord likes after service of notice of enhancement. Protection under the existing law.

“We have provided that, after the expiry of an initial lease, he should still be liable to be ejected, but only after his first lease, not if he is permitted to hold on; and unless the suit for ejectment is brought within six months after the lease expires, the right to eject on that ground lapses. He will always be liable to ejectment by *suit* for non-payment of arrears. He will be liable to enhancement in two ways, either by registered agreement, or by suit in Court, but enhancement by suit carries with it, if the raiyat accept it, a lease for five years at the rate fixed by the Court, after which, unless he has meanwhile acquired rights of occupancy, he can be ejected. Protection under the Bill.

“The Bill, as originally introduced, was silent as to ejectment after the initial lease, and the check it proposed on undue enhancement was (1) a gross produce limit, and (2) that the zamindar should pay compensation for disturbance graduated according to the ratio of enhancement demanded. It is on these points that the Government of Bengal objected to the conclusions of the majority, and asked us to go back to the original Bill. In regard to compensation for disturbance, I may say that at the original discussion in Council it was more objected to than any provision in the Bill, and it was condemned, not only, as I have already mentioned, by the Lieutenant-Governor but also in stronger terms by Mr. Reynolds. He said: ‘the proposed compensation for disturbance introduces an entirely new element into the agricultural laws of the country. We have not the least experience to show how this provision would work in India, and the principle of it seems to me objectionable.’ We found that Mr. Reynolds’ condemnation was endorsed by others whose opinions we Alteration made by the Committee.
Abandonment of compensation for disturbance.

Substitution of
judicial rent with a
five years lease.

could not disregard, and we abandoned it. As a substitute the judicial lease for five years was proposed and accepted, and so far the difference between the safeguard provided in the original Bill and that now given is that whereas, under the old Bill, the non-occupancy-raiyat objecting to pay the enhanced rent demanded of him could be ejected at the landlord's discretion subject to the payment of a fixed sum of money, he can now have the rent fixed by the Court; if he refuses to pay this rent he must go; if he accepts he is secure in his holding for another five years.

Effect of this
protection.

“The security from ejection and from undue enhancement which this provision affords, and the additional security given by the rule that all agreements for enhanced rent must be registered, do unquestionably facilitate the acquisition of the occupancy-right, though they are of course a long way short of the security which that right confers; and I am bound to say that, on this point, the two sets of criticism which I have read out to you seem to me equally exaggerated and unreal.

Initial lease.

“There remains the question of the initial lease. I have explained to you that, under the existing law, the landlord has a right to eject a non-occupancy-raiyat at the end of his initial lease.

Objection of the
Government of
Bengal.

“The Government of Bengal urged that this provision should not be maintained, and that, after having once been admitted to cultivate, no tenant should be ejected except upon receipt of compensation up to one-fourth of the rent which he has paid. I have explained to you that the considerations which led the Committee to reject this proposal were, *first*, that it was only fair that a zamindár should be able to give a new tenant a period of trial to ascertain if he was likely to be a satisfactory tenant before establishing him permanently, and, *secondly*, that the proposal led directly to the effacement of the distinction between the two classes of raiyat which the Secretary of State had insisted on our maintaining. I do not, however, deny that the provision is one which can be taken advantage of to prevent new tenants hereafter from acquiring occupancy-rights. It will not hurt existing tenants to any great extent; it can only touch in the future the restricted class who are not settled raiyats of the village, and these it can only injure where a regular lease is given, and where the zamindár is careful to sue within six months of the expiry of the lease.

Reasons for retaining
the rule.

Dangers inherent
in it.

View of Babu P. M.
Mukerji.

“Thus restricted I should not have supposed that the right could do serious harm, but the contention of Mr. Reynolds has received valuable support from the quarter whence he can least have expected it, and the representative of the

1885.]

Sir S. Bayley.

zamíndárs corroborates his prediction that they will use this provision to the utmost of their power to prevent the accrual of the occupancy-right. He says, and he ought to know, that 'having an absolute right of ejecting such a raiyat on the expiry of the term of his lease, the landholder will in every case grant short-term leases, with a view to protect his interests, and thus reduce non-occupancy-raiyats to mere tenants-at-will.' It is true they have the power at present, and to some extent, perhaps, make use of it, but I had not expected such authoritative testimony to the fact that the zamíndárs prefer a set of serfs to stable and improving tenants; and I confess that if anything could make me doubt the wisdom of the decision arrived at by the Committee, it would be the gratuitous testimony of the Bábú to the evil use which will be made of it.

"The application of the gross-produce limit to the non-occupancy-raiyat's Gross-produce limit. rent must, I fear, stand or fall with its application to that of the occupancy-raiyat. If it were deemed applicable to the latter I should be glad to see not only the system but the identical standard applied to the former, but if it is condemned as impracticable in the one case, it will be difficult to maintain the propriety of applying it to the other.

"The next chapter deals with the under-raiyat. This class we have left as Under-raiyats. in the Intermediate Bill No. II, with only the nominal protection of a fractional limit above the head rent beyond which the lessor cannot recover in Court. This is to my mind the most unsatisfactory part of the Bill, but the Committee were unable to afford to under-raiyats any real protection without subverting the customs and traditions attaching to the status. So long as they Protection visionary. are liable to arbitrary ejectment, there can be no protection against arbitrary enhancement, and the protection afforded by the Bill can in practice only refer to arrears of rent. With the right to eject, the lessor will always prefer this method of attaining his object to that of a suit in Court, so that the protection is, as I said, nominal. In fact the only practicable method of protecting them would be by giving to under-raiyats sub-occupancy rights against the lessor, of the same nature, though not necessarily in the same degree, as the occupancy-raiyat has against the tenure-holder above him. No such plan would, at the present time, be favourably received, as it is contrary to existing custom and is in that sense justly condemned as revolutionary. Moreover, the question is not at present of serious importance, though as population increases it is likely to become so; but I wish to say that in regard to the under-raiyat I do not think the Bill can be considered to be in any way a final settlement of the difficulty, and the next Problem remains to be solved. generation will probably have to reconsider his position.

Chapter VIII.

The 20 years' presumption.

Not to apply to produce-rents.

Nor to recorded and registered holdings.

Question of period for calculating the presumption.

"I come now to Chapter VIII, which is headed General Provisions as to Rent. The chapter opens with the sections which contain the well-known presumption that a tenure-holder or raiyat, who has held for 20 years at an unchanged rate of rent, shall be presumed to have held at that rent from the time of the Permanent Settlement and shall therefore not be liable to enhancement.

"The first alteration to be noticed is that we have omitted the provision making this presumption applicable to produce-rents. It seemed clear to us that where the rent is paid in kind, although the proportion of the gross produce paid remains the same, yet by a self-acting machinery this very fact discounts the rise in prices, and rents are thus of necessity enhanced or reduced as prices rise or fall. There is here no room therefore for the presumption. We have, moreover, exempted from this presumption tenures in any area to which the registration of tenures under the Bengal Bill is applied, and both tenures and holdings in any area in which a record of rights is made. In those cases the rights having been once registered there is no ground for continuing a presumption the object of which is to facilitate the proof of existing rights rather than to create new rights.

"A more important change, however, was strongly urged upon us, which the majority of the Committee did not see its way to accept. Ever since the presumption was created in 1859, the period to be taken into consideration has been the 20 years immediately before the institution of the suit.

"It was argued, and the argument is repeated in some of the dissents, that year by year as the Permanent Settlement fades into the remote past, the presumption ceases more and more to correspond with the facts and probabilities of the day, and therefore that the presumption should run, if not from the 20 years before the passing of Act X of 1859, at least from 20 years before the passing of this Act. In other words, unless a person could show hereafter that his rent had been unchanged since 1864 he should not get the benefit of the presumption.

"This would have left the presumption operative in any case in which it could now be pleaded, but would not have allowed it to grow up by lapse of time in those cases in which it has not yet come to maturity.

"The majority of the Committee held that the presumption arising from the fact of a man holding for 20 years at an unchanged rent is in itself a wise provision of law without any reference to its dependence on the existence of

1885.]

[Sir S. Bayley.]

the tenure or holding at the time of the Permanent Settlement, that it was in most cases easier for a zamindár who may be expected to keep regular books to prove if rent had been changed, than for a raiyat who does not keep books to prove that it has not been changed, and that as the law had been in its present shape on the statute-book for a quarter of a century, it was inexpedient to alter it. I myself voted with the minority on that occasion, but I am not anxious to see the decision of the Committee disturbed.

Decision of Committee
to maintain the
existing law.

“ We have made some alterations in section 52, the first of which, as it only assimilates suits for diminution with suits for increase of rent on the ground of alteration of area, I need not notice; but in sub-section (2) we have inserted some provisions to guide the Courts in deciding whether an increase of area is really a ground for increase of rent or not. They will have to consider whether the apparent increase is the result of encroachment on the part of the raiyat, or of erroneous entries in the books of the landlord; whether, in short, the entire area has really been previously considered in the rent or not. The provision regarding instalments (53) is new. It has been strongly represented to us that the custom of making the rent payable in twelve monthly instalments was frequently a source of great oppression to the raiyat, as it enables his landlord to harass him with an equal number of suits for arrears. On consideration we have deemed it inexpedient to interfere with custom in regard to instalments, but where no custom or contract exists we have provided for the payment being in four equal quarterly instalments; and have, in every case, directed (section 147) that suits for arrears shall not be brought more frequently than at intervals of three months.

Increase of area.

Instalments.

“ In paragraph 79 of the Statement of Objects and Reasons will be found an explanation of the provisions which the original Bill contained in regard to receipts and accounts.

Receipts and
accounts.

“ The main alterations introduced by the Committee are the annexure as a schedule to the Bill of forms of receipts and accounts which the Local Government will be bound to keep on sale, but which landlords may use or not at their pleasure. The Local Government will have power to vary these forms from time to time.

“ If landlords prefer to use another form, we only require that it shall contain substantially the information which the receipts in the approved form provide for, and the penalty attached to non-conformity is that such a receipt shall be *presumed*, till the contrary is proved, to be an acquittance in full. By the original Bill it was *deemed* to be so.

“ We did not think any more arbitrary clauses required. The greater confidence which the Courts will naturally repose in receipts kept according to the standard plan will probably be a sufficient inducement to secure their gradual adoption.

Receipt by registered proprietor.

“ Section 60 is new, and its object is to give an advantage to the landlord whose title is registered against a claimant who is not registered in the Collector's books.

Deposits.

“ The sections on deposits, though very carefully considered, have received but slight alteration at the hands of the Committee, and that only in matters of detail. Substantially the sub-chapter is the same as the provisions in the original Bill, explained in paragraphs 80 and 81 of the Statement of Objects and Reasons; but we have somewhat limited the discretion of the raiyat who deposits on the ground that he believes that his rent will not be received, by making this discretion dependent on the fact of the rent having been refused or a receipt withheld on a previous occasion.

Produce-rents.

“ In the sections dealing with the division or appraisement of the crop, where rent is paid in kind, we have made some alterations.

“ The original scheme is set forth in paragraphs 82 and 83 of the Statement of Objects and Reasons, as follows:—

Alterations made by Committee.

‘ 82. The provisions contained in sections 112 to 116, for the division or appraisement of a crop by a public officer in cases where the rent is paid in kind or is the value of a certain share of the gross produce, and a dispute arises between the parties, are based on the proposals made for Behar by the Behar Committee and the Rent Law Commission; but they are made generally applicable, and their details are taken, for the most part, from enactments in force in Upper India, where rent is very commonly paid in kind or in appraisement of the crops. They enact that, if either party neglects to attend at the proper time for making the division or appraisement, or if there is a dispute regarding the division or appraisement, the Collector may, on application made to him, issue a commission to such person as he thinks fit, directing him to divide or appraise the crop, and may further direct him to associate with himself any other persons as assessors for this purpose. If, in a division made in this way, either party receives less than his proper share, he may, within three months from the date of the division, sue the other party to recover the value of the additional portion of the crop due to him, and, if he does not so sue, the division will be deemed to have been rightly made. When the case is one of appraisement, the commissioner is required to submit his appraisement in writing to the Collector, who shall, after such hearing and enquiry as he thinks necessary, pass an order either confirming or varying it, and that order will be final.’

“ The principal alterations are these. We allow the Collector to interfere on the application of a magisterial officer, should his interference be deemed necessary to prevent a breach of the peace.

1885.]

[*Sir S. Bayley.*]

“ We have allowed the Collector to decide the question before him and carry out his order, only leaving it discretionary with him to refer questions to the Civil Court. We have added a section defining the tenant's rights as to the possession of the crop, its cutting, threshing and storing. The double claim to possession has given rise to much doubt and to much oppression, and it is most desirable that the right should be clearly defined.

“ In Chapter IX we have made some alterations in the portion relating to improvements.

Chapter IX.—Miscellaneous Provisions as to Landlord and Tenant.

“ We have given the Collector power (section 78) to decide disputes as to whether the landlord or tenant should have a right to make an improvement, and whether a particular work is or is not an improvement.

“ We have given the non-occupancy-raiyat the absolute right to make a well which in some parts of the country is essential to his cultivation. This right carries with it a right to receive compensation for it on ejection.

“ We have, in order to facilitate the decision of disputes regarding improvements, introduced a section (81), based on the law in force in the Central Provinces, providing that a landlord or tenant desiring to have any evidence recorded regarding an improvement which has been made may apply to a Revenue-officer to record it, and that the record so made shall be admissible in subsequent proceedings between the parties. We have also introduced a section (80) providing for the registration of improvements made by landlords. We have inserted a new section (84) giving power to landlords to acquire by compulsory sale, at a price to be fixed by the Court, any land on their estate required by them for the good of the estate, for building purposes, or for religious, educational or charitable objects. The Collector will have to certify to the sufficiency of the reason before the Court puts the section into operation.

“ We have retained the old substantive law in regard to the raiyat's right to surrender, but we have added clauses to assist the Court in deciding under what circumstances he shall be liable for the rent of the following year in case a formal notice was not served three months before the surrender.

“ The object of section 87 (abandonment) is to meet the difficulties which occur when a raiyat apparently abandons his holding, but in such circumstances as to give no assurance whether it is permanently abandoned or not. On the one hand, there is danger to the landlord of an action for dispossession, if he lets the land hastily to a new tenant; on the other hand, there is the danger of

[*Sir S. Bayley.*]

[27TH FEBRUARY,

temporary absence being taken advantage of by the landlord to effect the dispossession of a raiyat.

“To meet these two dangers we provide that if a raiyat abandons his residence without notice and without arranging for his cultivation and payment of rent, the presumption is that he has abandoned his holding. The landlord can then, after filing a notice in the Collector’s office, enter on the holding and let it to another tenant. We give, however, a term of two years in which the raiyat can sue for re-admission, and the Court may, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of possession, on such terms as to payment of compensation and arrears of rent as he thinks fit.

Protection of third parties.

“We have also added sections directed against collusive surrender or abandonment in fraud of the rights of third parties. The necessity for this was brought to notice in paragraph 69 of the Bengal Government’s letter of 15th September, where it is shown that raiyats not unfrequently sub-let the whole or a portion of their holdings in consideration of a large bonus for a term of years. To leave the interests of sub-lessees in such cases entirely at the mercy of the sub-lessor in collusion with his landlord would do serious practical harm. We have therefore provided that the surrender of a holding which is subject to a registered encumbrance shall not be valid without the consent of the encumbrancer and the landlord, and in case of abandonment we have provided (section 87 (4)) that the sub-lease shall only be avoided after the sub-lessee has had the opportunity of taking over, for the unexpired period of his sub-lease, the full rights and liabilities of his lessor in regard to the rent of his entire holding. These provisions appear to us to present the only method by which protection can be given to the sub-lessee without injury to the landlord, or without risking the conversion of these sub-leases into permanent transfers.

Merger.

“The only other point in the chapter to which I need draw attention is that we have omitted section 141 of the original Bill, which dealt with the merger of the tenant’s interests generally in those of the landlord. The section as it stood was, we thought, open to objection, inasmuch as it allowed of the occupancy-right being retained in the hands of the landlord, his tenants being thus reduced to the position of under-raiyats; but we objected to it also from a more general point of view, as enabling individuals to introduce serious complications into the tenure of property without sufficient reason. All that remains on the subject will now be found at section 22, the effect of which, stated in general terms, is that when the occupancy-right in a holding falls into the landlord’s hands it ceases to exist.

1885.]

[Sir S. Bayley.]

“ Chapter X deals with the procedure for the record of rights and settlement of rents. As the Bill originally stood these two processes were separate and were provided for in separate chapters. The Revenue-officer undertaking a record of rights had no power to settle rents nor to decide disputes. He had only to record what he found to be the existing facts of each holding, and the entries in such a record were to be presumed to be correct till the contrary was proved. This process, however, was to be supplemented by another called the settlement of rents, and the object of the Government in providing for this latter process cannot be better shown than by an extract from the Statement of Objects and Reasons. It was said in paragraph 99 of that Statement :

Chapter X—Record of Rights and Settlement of Rents.

‘ It has been stated, in the remarks above made on Chapter VI, that it is apprehended that, in many parts of the country, the framing of a table of rates will be impossible. It should be added that, in many instances, the mere framing of a table of rates will not suffice to settle the disputes between landlords and tenants. In either case the only satisfactory remedy may be a settlement of individual rents by a Revenue-officer, conducted somewhat in the same manner as in a Government estate at present; and it is with a view to providing such a remedy that Chapter XI has been framed.

Provisions in the original Bill.

‘ There is, however, one cardinal difference between the provisions of this chapter and those of the existing settlement law which should be noted at the outset. Under the existing settlement law, when a Settlement-officer has, after the most careful and protracted inquiry, settled the rents of an estate, and his proceedings have been scrutinized and checked by the superior Revenue-authorities, every individual rent fixed by him is liable to be called in question in the Civil Courts, and that not merely on the ground of error in respect of some matter, such as the status of a tenant or the validity of an alleged lease, falling most appropriately within the cognizance of a Civil Court, but also on the ground of an error in regard to the quality of the soil, the estimated amount of the produce, or some other such matter with which the Revenue-authorities, conducting their inquiries on a great scale, are far more competent to deal than any Civil Court trying a suit relating to a single holding can possibly be; in other words an important portion of the work, after being done by those authorities who are most competent to perform it is liable to be pulled to pieces by another set of authorities, who are far less competent to perform it. The enormous amount of unnecessary expense, trouble, and vexation, which this system entails on all concerned can be estimated from the fact, stated by the Board of Revenue in referring to a recent settlement, that out of 2,391 decisions in suits brought to contest the Settlement-officer’s rates, 2,202 were absolutely adverse to the plaintiffs. An attempt has been made to avoid this in Chapter XI of the Bill by distinguishing, among the various questions which may arise in a settlement of rents, those which the Revenue-authorities are most competent to determine and those which a Civil Court is most competent to determine, making the decision of the Revenue-authorities final on the former, and providing that the latter may ultimately be brought for decision before the Civil Court.

‘ The procedure of this chapter, besides being available for the purpose of Government settlements, may be made applicable by the Local Government—

‘ (a) when a large proportion of the tenants or of the landlords desires that it should be applied, and

‘ (b) when a resort to it is likely to settle or avert a serious dispute, existing or likely to arise, between landlords and tenants generally.

‘ It is applicable to tenants of any class, but would probably be made use of chiefly for settling the rents of occupancy-tenants.

‘ When the rents to be settled are rents which are subject to alteration by order of a Court, they will be *fixed* according to the principles embodied in the Bill, and so that they shall not exceed the maximum prescribed by the Bill in cases of enhancement. When, on the contrary, the rents are not of this description, they will be merely ascertained and recorded as rents are under Regulation VII of 1822.

‘ The Revenue-officer, having settled the rents, will prepare a jamabandi, showing the status of each tenant, the land held by him, the name of his landlord, whether the rent has been fixed or ascertained and the amount of the rent fixed or ascertained. This jamabandi will be published, and, after an opportunity for urging objections against it has been allowed, will be submitted to the higher Revenue-authorities with the objections and a report setting forth the grounds on which the Revenue-officer has proceeded. If ultimately sanctioned by the Local Government, it will be again published, and will then continue in force for 10 years.

‘ While it remains in force it will be conclusive (except as will be presently explained) as to the rents payable by those tenants whose rents are shown in it as fixed. As regards rents shown in it merely as ascertained, and as regards all other matters contained in it, it will be merely presumed to be correct until the contrary is proved.

‘ It will be observed that, in thus empowering a Revenue-officer to fix rents so as to bind the parties, we necessarily empower him to decide certain questions (as, *e.g.*, that of the status of a tenant) which more properly appertain to the jurisdiction of the Civil Courts and ought not to be finally decided by any other authority. It is not, however, intended that the Revenue-officer should finally decide such questions. He may, if he thinks fit, when such a question arises, abstain altogether from deciding it, and, under section 155, refer it to a Civil Court, or leave it to be raised before a Civil Court in a suit instituted by any party interested.

‘ It only remains to add that, by section 163, the Local Government is empowered to charge the expenses of all proceedings, other than Government settlements, under this chapter to the landlords and tenants concerned, in such shares as it thinks fit.’

“ Under the scheme, therefore, as sketched out in the original Bill, it will be observed (1) that the Revenue-officer, in recording rights, could not decide any disputes which might arise, and consequently his record could be of very little value; (2) that the Settlement-officer, though he could decide whatever disputes come before him, could only deal in a preliminary sort of way with a large class of disputes, which might afterwards be tried out by a regular suit in a Civil Court; (3) that though no settlement can in the nature of things be undertaken without the previous preparation of a record of rights, the two processes were unconnected in the Bill, and were treated as essentially separate and distinct.

1885.]

[Sir S. Bayley.]

“I need not take you through the successive steps by which the procedure was altered, first in the Bill No. II of last year, a description of which will be found in paragraphs 71 to 77 of our Preliminary Report, and then in the Bill of this year as explained in paragraph 42 of our Final Report. It will be sufficient if I explain to you the final result of our discussions as embodied in the Bill now before you. First, then, we have amalgamated the two processes. It was obvious that on a Revenue-officer beginning to record rights he would find himself face to face with numerous cases in which, on one side or the other, the status of the raiyat, the area of the holding, the amount of the rent payable, were the subject of dispute. Unless he could deal with these disputes his record would be of little value, and it was obviously absurd to empower one officer to settle questions of status and area and then to send in another to settle questions of rent.

Alterations made by Select Committee.

Two processes amalgamated.

Reasons for the change.

“It seemed equally unreasonable to empower a Revenue-officer, with all the parties and witnesses before him, to decide disputes and then to allow the whole matter to be re-opened *de novo* and fought out from the very beginning in a Civil Court. At the same time we wished in no way to diminish the security which parties now have in the decision of their cases by the most competent Courts and in the right of appeal to the highest Court in the country.

“What we have done then has been to give the Revenue-officer, in the first instance, power to settle all disputes that may come before him. Where no dispute arises, he will record what he finds, he will not alter rents, and his entries will only have a presumptive value in cases afterwards brought before the Courts; where a dispute arises, he will decide it, on the same grounds, by the same rules, and with the same procedure, as a Civil Court. His decision will be liable to appeal like that of the ordinary Civil Court to a Special Judge, who may or may not be the Judge of the district, and will be subject to a further special appeal to the High Court. In appeal the High Court may settle a new rent, but in so doing is to be guided by the other rents shown in the rent-roll. In other words, there can be no second appeal to the High Court merely on the ground that the rent has been pitched too high or too low, but if a second appeal is preferred, as it may be, on the ground that the Special Judge, owing to some error on a point of law, has, for example, found the holding to comprise more land or less land than it actually does comprise, or has given the raiyat a wrong status, and the appellant succeeds, the High Court can, without altering the rates, reduce or increase the rent, as the case may be.

Powers of Revenue-officer.

Special Judges and High Court to hear appeals.

“The decision of the Revenue-officer in disputed cases, subject to these appeals, will have the effect of a judgment of the Civil Court, and will be *res judicata*, thus barring a fresh suit for enhancement for 15 years.

Landlords
empowered to apply
for settlement.

“In section 103 we have given a special power to landlords to have this procedure applied, on depositing the expenses, to individual estates, and we apprehend that in the cases of auction-purchasers who are met by a combination of their tenants and are unable to get at the papers of their predecessor, this power will be found very useful.

“In sections 105 and 106 we have made ample provision for the publication of the record and for hearing objections, so as to eliminate the danger of any one being prejudiced by entries made behind his back.

Ordinary settle-
ments.

“All this applies to ordinary settlements which may be undertaken either by direction of the Government of India, or by order of the Local Government on the application of the parties, or in the case of serious disputes, in Court of Wards or Government estates or where an estate is under settlement. In fact, this procedure is the only procedure which will now be at the disposal of Government for the purposes of a revenue settlement. But this procedure allows of no alteration of rent except on the application of the individual landlord or individual tenant, and allows of no reduction of rents, except on the two or three grounds, such as diminished area and diminished prices, which can be pleaded as grounds of reduction in a Civil Court. We have, however, provided for a special settlement to meet special circumstances. Under the special settlement (section 112), the Settlement-officer will have power to settle all rents, and will, moreover, have power to reduce rents on other grounds than those ordinarily applicable, and all such rents as he settles will hold good for the same term of years as if fixed under a judicial decree. But this procedure, which gives unusual powers of interference, and which is meant to be applied only in circumstances in which the operation of the ordinary law is likely to prove insufficient, requires some strict safeguard. We have therefore provided that it shall only be applied after the previous sanction of the Governor General in Council has been obtained. It is an extreme power intended to take the place of Sir R. Temple's Agrarian Outrage Act, and I trust it will be resorted to as little as that Act was; but it seems desirable that in the exceptional cases in which it may be necessary to have recourse to this procedure, the Government should have the power of going to the root of the disputes and should be able to put the whole relations of landlord and tenant on a stable footing for a reasonable period.

Special settlements.

To be undertaken
only with the Pre-
vious sanction of the
Government of India.

1885.]

[Sir S. Bayley.]

“I have dealt with this chapter at some length, because I think it is one of the most important in the Bill. The zamíndárs naturally object to it, because its operation tends, by the process of registering the rights of the raiyat, to lessen their own power of dealing with him at their pleasure, while the Bengal Government seem to look upon it as the one oasis which stands out, in the sterile wilderness of the Bill, rich with potentialities of rest and refreshment to the weary raiyat. Divergent views as to the Settlement Chapter.”

“I am not sure myself that the raiyats will welcome the light of day in regard to their holdings more than the zamíndárs will welcome it in regard to their rents, but I am sure that the operation of this chapter, if wisely and discreetly carried out, will ultimately tend to give greater stability to all rights in the land, to reduce litigation hereafter, to give the Government the benefit of that real knowledge of facts in regard to the relation of landlord and tenant which they now have to pick up piecemeal through the records of the Courts and the registration officers, and the deficiency of which they so much lament, and that it will prove, as we are informed the similar record has proved in the permanently-settled districts of the North-Western Provinces, ‘the saving of the raiyat’ My own opinion.”

“The next subject with which I ought to deal is that of the table of rates ; but in our present Bill this chapter is like the more famous one on the snakes in Iceland. There is no longer a chapter on the table of rates. I have explained to you how special experiments have shown that only in very exceptional tracts were rates to be found so uniform as to offer any hope of the procedure being satisfactorily worked ; and as a more effectual method of arriving at the same end has been provided in the settlement chapter, we have decided, with the consent of the Local Government, to apply the happy despatch to this portion of the Bill. Tables of rates. Abandoned.”

“We have made some alterations in the provisions regarding *khamar* or *zirát* land. Khamar or private land.”

“A reference to paragraphs 18 and 19 of the Statement of Objects and Reasons will show the intentions of Government in respect to surveying and recording *khamar* land. It must be explained that the word *khamar*, and the other words used in the Bill, have a great variety of significations, but in this Bill, as in Act X of 1859, the only distinction we wish to draw, or are in any way concerned with, is between that private land of the zamindars in which occupancy-rights do not accrue, and land which is not the zamindar’s private land in which they do accrue. It was to meet a very real evil, *viz.*, Meaning of the word. Object of the provisions.”

the tendency to absorb into the landlord's private land large areas of land in which raiyati rights had grown up—an evil of the existence of which in Behar there is ample evidence—that Government took power in the Bill to record and mark off for the future in specified local areas all such land as is no longer open for the acquisition of occupancy-rights. The injury of the past could not be undone, but in a part of the province where the wholly agricultural population is not less than 800 to the square mile, it is obviously right to prevent any further encroachments in the future to the stock of raiyati land. We have supplemented the provisions of the original Bill by a section which allows a landlord at any time to get his private land recorded, so as to obviate the difficulty which might occur if he has to bring evidence of a past state of facts on a survey being ordered at some distant date, and we have given the tenant a converse power.

Instructions to
guide the Revenue-
officer or Courts.

“ We have also given specific instructions that the Revenue-officer should record as private land all land which has been cultivated as such by the landlord for 12 years previous to the passing of the Act, and all cultivated land that he finds to be recognized as such by village-custom. In regard to other land, where local custom is insufficient to guide him, he shall look to whether the land has been leased specifically as private land in past years ; but otherwise the general presumption shall be that land is not the proprietor's private land.

Distrain.

“ Coming now to the chapter of distraint, we have maintained the principle that distraint shall not ordinarily be left to be carried out by the zamindar's servants without the supervision of the Courts. We have by requiring it to be made on ‘ application ’ instead of on ‘ suit ’ materially reduced the expense. We have given facilities for an early application being made, and have empowered the Courts to issue in such cases an order prohibiting the removal of the produce pending the final order.

“ We have also provided that when the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application to the Court under this chapter, it may, by order, authorize the landlord to distrain by himself or his agent ; but that a landlord so distraining shall forthwith give notice to the Court, and that the Court shall thereupon depute an officer to take charge of the produce distrained, and proceed thereafter as if he had distrained under the ordinary procedure. The High Court is empowered to make rules regulating this procedure.

1885.]

[*Sir S. Bayley.*]

“The alterations made in the existing procedure in rent-suits by the Bill as first introduced were explained in paragraphs 114 to 116 of the Statement of Objects and Reasons. Chapter XII —
Judicial Procedure.

“That Statement then went on to say—

‘It is hoped that, when the measure comes to be fully discussed, other expedients for simplifying the procedure in rent-suits may be discovered, but, with the exception of those above referred to, none have hitherto been suggested which the Government of India would be prepared to accept. As regards the possibility of devising any effectual procedure analogous to that on negotiable instruments under Chapter XXXIX of the Code of Civil Procedure, or any other form of summary or provisional remedy, the whole history of such remedies both in this country and elsewhere is against it. Explanation in State-
ment of Objects and
Reasons.

‘A summary form of procedure can scarcely help a plaintiff unless his case is of the simplest description, admitting of being answered only in the simplest way, and he comes into court armed with documentary evidence of so reliable a character that the presumption against any defence being possible is extremely strong. In such cases the Court may very properly, and with great advantage to the plaintiff, be empowered to decline to hear the defendant and to decide against him summarily and provisionally, unless he pays the amount of the claim into Court or gives security for it. But what advantage could be hoped for from a procedure of this description in rent-suits in Bengal, which admit of the most varied and complicated defences, in which the evidence on both sides is usually of the most worthless character, and charges of forgery and perjury almost common forms in the pleadings? If the legislature consented to provide such a procedure for rent-suits, it would probably feel bound to surround it with so many safeguards that the plaintiff would gain nothing by adopting it; and, even if such safeguards were dispensed with in the Act, the Courts would naturally be so cautious about refusing leave to defend, or requiring security from a penniless raiyat, that the so-called summary remedy would cease to be summary, and, like the summary suits of former days in some parts of India, become as lengthy and complicated as an ordinary suit, with the further disadvantage of not being final.

‘The truth would seem to be that facilities for recovering rents in Bengal should be sought for not so much in novel forms of procedure as in a reliable record of tenancies and their incidents and a simple mode of adjusting rents; in other words, by going to the root of the disputes which, though they may not always come to the surface, are believed to underlie a very large proportion of the contested rent-suits.’

“The Select Committee gave their most earnest consideration to the question of further simplifying the procedure, but without much success.

“In our intermediate report we explained what we had been able to do, which was as follows :— Changes made by
Select Committee in
their Intermediate
Report.

‘We have excluded suits for penalties and suits for the recovery of possession of land from the special procedure prescribed in sections 191-197 of the original Bill.

‘We have introduced at the opening of this chapter a section (159), modelled on a section in the Presidency-towns Small Cause Courts Act, empowering the High Court, with

the approval of the Local Government, to make rules declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant, or shall apply subject to modifications. We trust that as experience is acquired of the working of the Courts under the new Act it may be found possible to exercise this power so as to effect further simplifications in procedure.

‘For ourselves we must confess that, after the most anxious consideration of the various schemes which have been propounded for shortening and simplifying the procedure in rent-suits, we are unable to suggest anything of importance in this direction which would not involve a serious risk of failure of justice. In particular, while we are anxious to facilitate the service of summons and the proof of such service, we are unwilling to give any presumption of law against an absent defendant except on adequate proof of such service.

‘We have, however, with a view to avoiding, as far as possible, the complication and delay which arise from questions as to the landlord’s title being raised in rent-suits, made an important amendment in the section (164) which requires a tenant, admitting that rent is due from him, but pleading that it is due not to the plaintiff but to a third person, to pay the amount into Court. Our object is to force the issue of disputed title to be raised separately and independently of the rent-suit, and we have therefore provided that the Court shall, on the money being paid in, cause notice of the payment to be served on the third person, and unless he, within three months, institutes a separate suit against the plaintiff and obtains an order restraining the payment of the money, it will be paid out to the plaintiff on his application.

‘We have further added a section (165) providing that when a defendant in a rent-suit admits that money is due from him to the plaintiff but disputes the amount, the Court shall, as a rule, require him to pay the amount admitted into Court.

‘We have provided (section 173) that when a plaintiff institutes a suit for the ejection of a trespasser he may claim, as alternative relief, that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court.

‘Section 207 of the original Bill provided that a landlord or a tenant might institute a suit for the determination of the nature and incidents of the tenancy. We have (section 174) substituted the simpler and cheaper procedure of an application, and have empowered the Court, to which the application is made, to direct that a Revenue-officer shall make a local enquiry into any matter it thinks fit.’

Questions referred to
the High Court.

“In addition we referred two questions specially to the High Court—

‘What modifications it may be desirable to make, whether by rules or otherwise, in the Code of Civil Procedure, with a view to expedite the trial of rent-suits; and in particular whether it is desirable that landlords should be empowered to institute, by means of a single plaint, suits for arrears against a number of raiyats holding independently of each other.

‘Whether any provision can safely be enacted restricting the right to claim a re-trial when a decree has been given *ex parte*. We are aware that a Judge is in no way bound to admit a re-trial unless he is satisfied that the summons failed to reach the defendant or that he was prevented by some sufficient cause from

1885.]

[Sir S. Bayley.]

appearing; but the representations made to us are to the effect that the due service of the summons is systematically denied, and that the Courts too readily accept the plea, thus encouraging tactics the only object of which is to interpose delay and to involve the landlord in unnecessary expense in recovering his dues.'

"These questions were considered and answered by the Hon'ble Judges Reply of the Judges. of the Court in their collective capacity. Their answers were to the effect that the modifications already introduced were unobjectionable, but that no modifications other than those 'could be made in the ordinary law applicable to civil suits, without opening the door to evils which would outweigh the advantages to be derived from increased expedition.'

'The suggestion,' they said, 'made in the Report of the Select Committee that suits for arrears of rent should be brought by means of a single plaint against a number of raiyats holding independently of each other would, the Judges believe, be impracticable and lead to delay, worse, in all probability, than those now experienced. The Judges have carefully considered the question whether, leaving the law unaltered, any changes could be made in the executive orders issued to subordinate judicial officers with a view to expedite the decision of rent-suits. The orders at present in force seem to provide almost all that is necessary to secure the postponement of other suits to rent-suits and the prompt decision of all rent-suits which are not contested. The Court proposes, however, to direct that in future undefended rent-suits shall have priority over short suits, though both alike shall, as far as possible, be taken up on the date fixed.

'It would, the Judges believe, be extremely dangerous to enact any such provision as that proposed in clause (b) of paragraph (2), to restrict the right to claim a re-trial where a decree has been given *ex parte*, and on this point they agree entirely with the Select Committee. It is true, as has been represented to the Committee, that landlords are frequently involved in unnecessary expense and delay by the tactics of their raiyats who deny service of summons, but it seems absolutely essential, in order to prevent fraud by dishonest agents of landlords in collusion with the process-servers, that raiyats against whom decrees are passed *ex parte* should have an opportunity for applying for a re-hearing.

'The third suggestion is that a defendant in a suit for arrears should not be allowed to appeal from a decree passed against him [except on depositing the amount of the decree. This proposal, which might, no doubt, serve to obviate some of the inconvenience, expense and delay now caused to zamindars by recalcitrant raiyats, would, however, it is believed, in many cases involve the defendants in very serious] hardship. The Court is not, therefore, disposed to recommend its adoption. It may be observed further that it is always open to a zamindar to execute his decree notwithstanding that it is under appeal, in which case, if execution is stayed, the law provides that security shall be given for the due performance of the order that may ultimately be passed.

'The Judges are fully sensible of the necessity for affording assistance to the landlords in the speedy and cheap recovery of the rents due to them, and are aware that at present much real cause for complaint exists. It would therefore have been a matter of satisfaction to them had they been able to accept any of the suggestions put forward for

the simplification of procedure and the removal of the means now too often employed by raiyats to harass their zemindars. It is, however, scarcely possible legally to facilitate the recovery of rents without putting into the hands of unscrupulous landlords or their subordinates weapons which may be easily used for the oppression of their tenants.'

Remedies proposed
by the Judges.

"The Judges go on to point out that the only remedies for expense and delay are to be found in the lowering of fees and in the multiplication of Courts. On these points I am not in a position to say anything here, save that, while I have no doubt that the latter question will be fully considered by His Honour the Lieutenant-Governor, the former, in connection with the scale of court-fees generally, is now under the consideration of the Government of India. Further proposals made by Babu Mohini Mohun Roy with the object of shortening the procedure have since been considered by us. They were referred to a number of experienced judicial officers, but were not favourably received. It seems quite clear that no remedy is to be found either by summary procedure, by making returns of service conclusive evidence of actual service of process, by restrictions on the right of re-trial, or by any similar method. Rent-suits are tedious and expensive, because the issues to be tried are often intricate, and because facts are hard to be got at. With rights and rents recorded, with receipts and accounts properly kept, and above all with trustworthy agents, the zamindars would find many of these difficulties vanish. But if there is a real dispute a summary trial will not help. It only means that the real trial of the question at issue is postponed and there are two processes instead of one. I am afraid the Judges touched the heart of the matter when they said: 'It is scarcely possible legally to facilitate the recovery of rents without putting into the hands of unscrupulous landlords or their subordinates weapons which may be easily used for the oppression of their tenants.' I have dealt at some length on this subject and been careful to give the opinion of the High Court, because it is made a ground of reproach to us that we have not given any more summary method of recovering rents. I regret that we have not been able to go further. We have rejected no suggestion having any element of success in it without first obtaining the concurrence of the most competent judicial officers, and we have in addition to those abbreviations already mentioned added some more in the chapter about sales for arrears which I hope will prove useful.

Sales for arrears.

"The general scheme of the Sale chapter was very fully explained in paragraphs 124-132 of the Statement of Objects and Reasons, and as we have not departed from the general scheme I will not go over the whole ground again, but merely explain the slight modifications of detail which we have

1885.]

[*Sir S. Bayley.*]

'ventured to introduce. We have included among 'protected' interests, that is to say those which cannot be voided by the purchaser, the right of a non-occupancy-raiyat to hold for five years at the rent fixed by a Court.

—“We have removed the limitation which restricted the decree-holder's right to get arrear-rents out of the purchase-money to such rent only as might be due for six months after the date of decree. It is not in the interest of either party to penalise the landlord's forbearance in abstaining from executing his decree.

“We have, in order to shorten proceedings, inserted in section 163 a clause enacting that in cases under this chapter the order of attachment and the proclamation of sale required by section 287 of the Civil Procedure Code shall be issued simultaneously.

“We have, at the suggestion of our hon'ble colleague, Bábú Peári Mohan Mukerji, inserted a new section (174) allowing a judgment-debtor to apply to set aside a sale of his tenure or holding, on depositing in Court within thirty days from the date of sale for payment to the decree-holder the amount recoverable under the decree with costs, and for payment to the purchaser a sum equal to 5 per cent. on the purchase-money. Applications under section 311 of the Code of Civil Procedure to set aside sales cause expense and annoyance to the decree-holder and auction-purchaser. It is believed that they are often instituted merely with a view to recovering the tenure or holding which has been sold; and it is anticipated that, if a judgment-debtor is allowed to recover his property by depositing after the sale the amount decreed against him, the number of these applications will be considerably diminished.

New section for repurchase of holding on payment of arrears and interest.

“Having decided that no alteration should be made by this Bill in the existing law relating to the incidents of the patni tenure, we have consequently excluded those sections which dealt with the sale procedure applicable to those and similar tenures. It will be for the Government of Bengal to deal with the question of making this procedure applicable to the summary sale of other tenures which may be registered under the Bill now before the Lieutenant-Governor's Council.

Patni sales.

“I have a few remarks to make on Chapter XV, which brings together in one focus all the provisions we think it necessary to make in limitation of contract. The necessity of interfering with freedom of contract was fully discussed at the second reading of the Bill, and was then affirmed by the

Contract sections.

Council. I shall not therefore further discuss this question. I shall only deal with our alterations, and, first, I would point out that, instead of making our restrictions equally applicable to all contracts whenever made, we have divided these limitations into three classes, the first one referring to all contracts whether past or future, the second to quite recent contracts, the third to future contracts only. In the first class are placed only those contracts which purport to bar in perpetuity the accrual of occupancy-rights, to destroy occupancy-rights already in existence, to allow ejection without process of law, to prohibit improvements. The second class deals with contracts, purporting to bar the accrual of occupancy-rights during a particular tenancy, and in this class we have decided not to go behind the date on which the Government published the Rent Commission's Report and Bill. It may be fairly said that any contracts of this nature made subsequent to that date have been made in order to defeat impending legislation, and we think they should not be given effect to. In the third class, which only restricts future contracts, we have simply put in legal form the general statement that neither the accrual of the occupancy-right nor the enjoyment of the more important incidents attached to that right shall hereafter be defeated by stipulations in a lease.

Division into three classes.
First class.

Second class.

Third class.

Reclamation leases.

“ We have left reclamation leases wholly to contract, save that we do not allow them to operate so as to destroy an occupancy-right which has grown up during the lease.

Chur and utbundi.

“ We have put *chur* lands and *utbundi* lands on a special footing, which is practically the same as that of the ordinary raiyat under Act X of 1859. No occupancy-right will be acquirable in them until they have been held for twelve years, and meantime the tenant will be bound to pay whatever amount may be agreed upon between him and his landlord. We have omitted the chapter in the original Bill relating to *bastu* or homestead lands, and have brought all our legislation on this point into one brief section, to the effect that homestead land when not held as part of the holding shall be dealt with according to local usage; and when local usage cannot be ascertained, then it shall be treated as if it were ordinary raiyati land. The varieties of local usage were so many and of such importance that any regulations which could have been framed must have done harm and have been found inapplicable in many places.

Bastu.

Supplemental Chapter.

“ There are two alterations only in the Supplemental chapter which need be noticed. One is that when a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the

1885.]

[Sir S. Bayley.]

estate or tenure to do any act which involves a violation of that rule or condition.

“The other provides that ‘this Act shall be read subject to any Act passed after its commencement by the Lieutenant-Governor of Bengal in Council.’ In the absence of some such provision as this, the Bengal Legislative Council would, owing to the wide extent of ground covered by this measure of the supreme legislature, find itself practically debarred for all time to come from dealing with almost every question affecting the relations of agricultural landlords and tenants.

“I have now gone through all the more important changes which have been made in the Bill since it came into the hands of the Select Committee, and have endeavoured to put you in full possession of the considerations by which we have been influenced. In performing this task I am well aware of the intolerable tediousness I must have inflicted on you, but I must still ask your patience for a little time while I offer some remarks as to the value which should be attached to the two opposing lines on which the minutes of dissenting members proceed, and the real amount of protection given to the raiyat by the labours of the Select Committee. Bill finished.
Further remarks.

“Turning now to the dissents, we find that they may be broadly divided into three classes: (1) those which object only to a few specific provisions of the Bill; (2) those which, accepting the Bill as a whole, express dissatisfaction at the insufficiency of the protection given to the raiyat; (3) those which object to the whole scope of the Bill as injurious to the interests of the zamindar. Three classes of
dissents.

“It is not my purpose here to deal with objections to specific clauses of the Bill. The more important have been noticed already; the less important can best be reserved till the specific amendments on them are brought before the Council. Specific proposals.

“I wish, however, to say, a few words on those objections which are directed against the general scope of the Bill. It was not to be expected that a Bill of such importance and complexity as this—a Bill which has to deal with absolutely conflicting interests, which purports to set a limit on the power of one class to absorb the fruits of the industry of another class, and which has to regulate their relations in regard to the two leading interests of property and power—it was not to be expected that such a Bill could meet with universal acceptance or could fail to give cause of offence to those who on either side take extreme views. There are some who, if their views were carefully analysed, would see Insufficient
protection to raiyat.

in the raiyat nothing but a serf, who look upon his rights as only interests carved out of the landlord's absolute property in the soil, and as being therefore entirely dependant on the landlord's will and pleasure. There are others who look upon the raiyat as having the true property in the soil, and the landlord only as the tax-collector for the State, as one therefore who should have no more part in settling what that tax is to be or from whom it should be taken than a collector of any other State assessment. Between these two extreme points there are many halting-places, and the dissents show that, while some of our members would have guided us some way towards the latter point, others would have had us adopt the high landlord view of the position and look mainly if not solely to his interests. The dissents are naturally coloured by the dominant idea in the mind of either party, and will, I think, to some extent have the effect of neutralising each other in the public mind. What I would ask the Council to consider is, whether it is true that in the words of one party we have 'signally failed to afford the occupancy-raiyat reasonable protection,' and as regards the non-occupancy-raiyat 'have neither given protection as regards his rent nor facilitated his acquisition of the right of occupancy'—whether it is true, in the words of the other party, that the 'measure is opposed to the just rights of the proprietors of the land and detrimental to the best interests of the country.'

Position of the
occupancy-raiyat,

“Let us compare briefly the position of the raiyat under the old law and under the Bill as it stands.

Under the existing
law,

“Under the existing law the position of the occupancy-raiyat may be thus described. In the first place, he has a great difficulty in making good his title to occupancy-rights. He must prove that he has held every particular field of his holding for 12 consecutive years, and in the absence of trustworthy village-records the proof is often impossible. He and his forefathers may have resided in the village for generations, but evidence of this is entirely immaterial to the issue. He may be able to show that he has held *some* land in the village in every year of the last 12, but if the fields have been changed his claim to the occupancy-right cannot be maintained. *Secondly*, the law, not content with making the proof of occupancy-rights very difficult to the raiyat, allows him to contract himself out of them, and these engagements, entered into without understanding and forced on the raiyat without adequate consideration, are rapidly becoming a common form. *Thirdly*, the law gives the occupancy-raiyat no protection from incessant enhancement. It enumerates, it is true, the grounds on which enhancements may be sought, but it does not prescribe the term for which a rent after enhancement is to hold good, and it does

1885.]

[Sir S. Bayley.]

not prevent a landlord from instituting annual enhancement-suits, or from annually serving the raiyat with a demand for an enhanced rent. *Fourthly*, the law does not define the raiyat's right to make improvements, even of the most ordinary and necessary character, nor does it determine his rights in them in the event of his being ejected. *Fifthly*, the law makes every instalment an arrear of rent that is not paid on the exact date fixed in the raiyat's engagement or by custom, and allows a landlord to institute a separate suit for each instalment in arrear. As the custom of monthly instalments is common, the harassment which a landlord may thus inflict on his raiyat is intolerable. *Sixthly*, the law makes the raiyat liable to be ejected in execution of a decree for an arrear of rent, even though the sale of his occupancy-right by auction would more than satisfy the debt. Thus he loses, and the landlord acquires, not only the value of his interest in the land, but also of any improvements he may have made, and of any crops which may be still on the ground. *Seventhly*, the law of distraint is such that under cover of it landlords are able, if so disposed, to exercise a ruinous interference with the raiyat's disposition of his crops and reduce him to beggary.

“ To turn to the corresponding provisions of the Bill. *First*, the Bill, by and under the Bill. returning to the old principle of the khudkhasht raiyat, gives him his occupancy right not only in the actual lands held for 12 years, but in any land held by him in the village, and it meets the great blot of the old law by facilitating his proof of these rights. He has merely to show that he has held *some* land continuously within the village boundaries for 12 years, and he becomes a settled raiyat of his village. It is presumed in his favour, in any proceeding between himself and his landlord, that in the absence of proof to the contrary he is an occupancy-raiyat of the land which he is found to be holding. This presumption, which cannot operate unjustly to the zamindar, is very rightly thought to be of immense value to the raiyat.”

“ *Secondly*, the Bill prevents the occupancy-raiyat from contracting himself out of his status.

“ *Thirdly*, the Bill puts an effectual check on incessant enhancements. Whether the raiyat's rent be determined by a Court or by private agreement, in either case the Bill says that it shall not be again enhanced for fifteen years. The Bill also puts a strict limit to the amount of enhancement by agreement, and that this protection is considered of real value by the dissentients is shown by the importance they have attached to it. The changes made in the grounds of enhancement in Court have already been discussed.

The only change that is in any way likely to prove prejudicial to the raiyat is the enhancement on the ground of a rise in prices, and that not because it is unfair, but because it is workable, while the old law was admittedly impracticable. Even this concession the landlords profess to regard as 'visionary'.

"*Fourthly*, the Bill secures to the occupancy-raiyat power to make improvements and enables him to recover his outlay in case of eviction.

"*Fifthly*, in the matter of rent instalments, the Bill, while leaving the number and dates of instalments to agreement or local usage, provides that an interval of at least three months shall intervene between the institution of successive suits for arrears of rent.

"*Sixthly*, the Bill abolishes ejectment in execution of a decree for an arrear of rent against an occupancy-raiyat, and requires the decree-holder to bring the tenancy to sale.

"*Seventhly*, the Bill has effectually weakened the power of the landlord to use the process of distraint for purposes of simple oppression, though it remains a valuable instrument for the recovery of arrears.

"I say confidently that on all these points the Bill is an improvement on the old law, and, without any injustice to the landlord, fulfils the object of the Government, which was 'to give reasonable security to the tenant in the occupation and enjoyment of his land.'

The non-occupancy-
raiyat.

"To pass now to the non-occupancy-raiyat. I have already, with reference to Chapter VI, gone so fully into a comparison of his position under the Bill with that under the old law, that I need not take you over the ground again; but admitting that a certain amount of peril lies in the power of a landlord to eject him at the expiry of his initial lease when he is first admitted under a registered lease, and when the landlord sues within six months of its expiry, I would ask you to look at the effect of our provisions as a whole. The raiyat can, under the above circumstances, be ejected, but otherwise he cannot be. If the landlord wishes to enhance his rent, he can only do so by a registered agreement or by suit in Court. The raiyat is not to be ejected for refusing an enhancement, but the Court will fix a fair rent, and he can hold on at this rent for five years. He cannot contract himself out of the right to acquire occupancy-rights. The Bill allows the period during which he holds under a lease and the period during which he holds at a judicially fixed rent to count towards the accrual of occupancy-rights; and yet we are told that all these

1885.]

[Sir S. Bayley.]

things are vain. Neither in the necessity of registering initial agreements and agreements of enhancement, nor in the right to sit on unless ejected by suit within six months of the expiry of the initial lease, nor in the right to a judicially fixed rent with its period of five years, neither in any of these things nor in all of them put together is any protection afforded to the non-occupancy-raiyat nor is anything done to facilitate his acquisition of the right of occupancy. I leave it to you, gentlemen, to decide what weight should be attributed to accusations such as these.

“ Coming now to the objections taken by the landlords, it is more difficult **Landlords' objections.** to formulate these, for they deal apparently with more than half the sections of the Bill and must be considered with reference rather to specific clauses than with the general scope of the Bill. The general accusation which I have quoted would seem to have been intended to refer to a Bill which still enforced the transferability of occupancy-rights, the extension of that right to the estate as well as to the village, the gross produce limit, the limitations on initial rents, the fractional limitations on enhancement in Court, the avoidance of all past contracts not in accordance with the Bill. I find no allusion made anywhere to the fact of these provisions having been struck out. I find no allusion to the simplification of the method of enhancement on the ground of rise in prices except that what Mr. Reynolds speaks of as a provision that ‘ puts enormous powers of enhancement into the hands of the landlord ’ is sneered at by Bábú Peári Mohan Mukerji as more visionary than real. I can only say that we have endeavoured, and I think have succeeded in our endeavour, to give great facilities for moderate enhancement, and have striven, as far as was possible without injuring the rights of others, ‘ to give reasonable facilities to the landlord for the settlement and recovery of his rent.’ The Council will, I think, easily understand from the general scope of my remarks and from the resistance we have offered to many proposals supported by all the ability and all the authority of the Bengal Government, that we have not lost sight of the just interests of the landlord, and I hope to be able to prove this with regard to the long series of amendments which it is proposed to move on specific sections. There is one complaint made by the representatives of the zamindars, and in a modified form by Mr. Hunter, on which I should like to say a few words. The complaint is that **Personal examination of witnesses.** the Committee did not examine witnesses personally. Mr. Hunter sees very clearly that it was not possible for the Select Committee to do this, but regrets that the Rent Commission did not adopt the method—a method which, in enquiries of quite another scope, and, indeed, recently under the hon’ble gentleman’s own auspices, has worked most successfully. Well! I am not ac-

Probable reasons of the Rent Commission for foregoing this method.

quainted with the reasons which induced the Rent Committee to forego this method. My own connexion with the Bill, and my official knowledge of the discussion, indeed, date from a much later time, only from the receipt of the Secretary of State's despatch sanctioning legislation; but I can quite understand that the Rent Commission did not act without good reason. Those who can recollect the agitation caused by the Indigo Commission of a quarter of a century ago may well have thought it dangerous to start an agitation on the infinitely more important question of rent by a peripatetic Commission of Enquiry. They may well have thought that more light would be thrown upon the problem by the opinions and knowledge of the judicial and executive officers, whose business it is to enquire daily into the relations of individual landlords and tenants, than by collecting evidence which, on the side of the rich and powerful, would be forthcoming in abundance, and would be put before them with all possible skill and ability, while on the part of the poorer and humbler side it would be no one's business to collect it, nor could it, in the shape of personal knowledge, be got at save with infinite trouble and at some peril to the witness.

Such a course not open to the Select Committee.

“These and other similar considerations may have led them to prefer the method they adopted to that of a Commission going about to take evidence. I am not concerned to discuss the question whether they were right or wrong, for there is very much to be said on the other side; it is sufficient to point out that, when the legislature had once decided the general lines on which we were to proceed, it was no longer open to the Select Committee to adopt this method. Such a course is neither usual nor desirable. In fact the whole constitution of Select Committees of this Council renders it impracticable for them to go about the country collecting evidence. In what we did, however, we adopted, I think, an equally efficacious method. We have, during the past two years, submitted every section of the Bill twice over to the most thorough sifting at the hands not only of persons interested, but of experienced and impartial officers, judicial and executive, and to Committees which could test the experience and opinions of one officer by confronting them with the experience and opinions of another officer; and if the result has been a great variety of opinions, it is not merely because human nature is so constituted that opinions must differ on questions involving most important and antagonistic interests—questions in which the everlasting debate between old and new, between those who have and those who have not, must come to the front, but also because the facts themselves differ so widely; the facts of one estate are not the facts of another estate; the facts of one part of the country are not the facts of another part of the country. It is one of the misfortunes of legislation that in this

Method adopted by the Committee.

Reason of great variety of opinions.

1885.]

[*Sir. S. Bayley.*]

country as well as in others, but more in this country perhaps than elsewhere, we have to make our laws applicable to a number of heterogeneous units of area and population, united together only by one common Government. We have to legislate in the interest of the average, and to neglect what is local and exceptional. This leads no doubt to difficulties. We have to insert some provisions which, in parts of the country, are not wanted; we have to omit other provisions which, in some parts of the country, are certainly desirable. Accepting this as the necessity of our position, not only have we endeavoured to get the fullest measure of light and knowledge to bear on our deliberations, we have also endeavoured to guide ourselves by that light and knowledge. We have given time—ample, abundant and overflowing—for the elaboration of criticisms, and for the collection of opinions, and the criticisms and opinions so collected and elaborated have been carefully and laboriously digested. The amount of literature that has gathered round this subject is such that no one except under the sternest sense of duty could possibly read, much less assimilate, it, and it really leaves nothing new to be said on any point in this wilderness of controversy.

Difficulty of legislating for the whole of Bengal.

“The Bill was before the public in one shape or another for three years before it was introduced into this Council, and during the two years it has been before the Select Committee every section has been discussed and re-discussed from every possible point of view. I can safely say that never has a Bill been introduced into this Council which has had so much thought and consideration expended upon it by the outside public. There is really a ghastly irony in the accusation that we are now giving no time for consideration and are asking you to pass the Bill with undue and indecent haste; I am unwilling to look upon such an accusation as made in a malicious spirit, but it is really difficult to suppose that any one can attach serious credence to it. I can understand the advocates of the zamindars wishing to drop the Bill altogether. I can understand, though I cannot sympathise with, those advocates of the raiyats who would see this Bill abandoned in the hope that this may necessitate a more drastic measure being passed hereafter; but what I do not understand is, how any one, who regards public and not personal interests, can wish that a growing agitation should be inflamed, and that dangerous passions should be further exaggerated, by a renewed and useless discussion of matters which further discussion cannot possibly further illumine. Yet this is, I understand, the recommendation made by the representatives of the zamindars. In fact, what I am now saying is really addressed to what is practically the first disputed question for the Council to decide. You have to consider whether this Bill should be re-published with a

view to a fresh collection of opinions, involving a fresh consideration by the Select Committee, and the hanging up of the whole subject for another year, when precisely the same tactics would be repeated. I would answer that there must be some point of finality in all this discussion. The whole scope of the work of the Select Committee, since the Bill was last re-published, has been to prune excrescences and to cut away novelties. Our alterations during this session have not been such as to insert any novel provisions of serious importance into the Bill, nor such as to offer material for discussion outside the well-worn lines. We have ample evidence from various parts of the country—from Mymensingh in the east to Behar in the west, from Rungpore in the north to Orissa in the south—that the agitation on this subject cannot safely be prolonged, and that whatever is done in regard to the Bill should be done finally and at once. I believe I shall have the support of His Honour the Lieutenant-Governor in saying that it would, in his opinion, be seriously injurious to the interests of the province if legislation is now postponed, and I have no hesitation therefore in asking you to reject the amendment that the Bill should be re-published, and to decide on proceeding at once with the consideration of our Report and of those amendments of which notice has been given.”

The Hon'ble MR. QUINTON said:—“The impressive words with which my hon'ble friend Sir Steuart Bayley has just concluded his speech may, I think, notwithstanding the plea for delay put forward by my hon'ble friend Bábu Peári Mohan Mukerji in the first amendment standing in his name, justify us in congratulating ourselves on at last approaching the end of this long controversy, and on reaching the final stages of the Bill, which has been under the consideration of the Select Committee for the past two years.

“My hon'ble friend Sir Steuart Bayley has, on the part of the Government of India, acknowledged our services in generous terms, and whatever may prove to be the value of those services I am sure that not one of us failed to appreciate the gravity of the work on which we were engaged, and the momentous results that must follow on our recommendations; for the task which this Council has undertaken, and on which we were required to advise it, namely, the revision and amendment of the Statute-law respecting the rights and interests of landlords and tenants in Bengal, is certainly second in importance to no measure which has come before it during the present generation. That law affects vitally the interests, the well-being, even the very means of subsistence, of a population of 60 millions of people, for the bulk of whom agriculture furnishes the sole means of support. With such a law, when it works well on the whole,

1885.]

[*Mr. Quinton.*]

no wise Government would interfere; but when it has been found mischievous in its operation, when it has been left behind by the progress of the agricultural classes, or has ceased to be applicable owing to altered economic conditions, then it is the duty of the Government to step in, and to bring the law into accordance with the requirements of the time. In fulfilment of this duty the Bill was introduced, and referred to the Select Committee, whose report, now on the table, we are, I hope, about to take into consideration. That report expresses the opinion of only a majority of the Committee on the points with which it deals. It was not to be expected that unanimity should prevail respecting a measure purporting to regulate questions so numerous, so delicate and so important, among members holding such antagonistic views as those entertained by extreme partisans on the side of the landlords and of the tenants. It was hopeless to think that those who considered that the tenantry throughout Bengal and Behar were living in such a state of contentment and prosperity that any attempt to amend their condition by law was altogether uncalled for could be brought to agree on provisions for that purpose with others who believed that a diametrically opposite state of things existed, that the condition of the peasantry in many parts of the provinces was deplorable, and that the defects and abuses of the law by which this has been allowed and encouraged called for a speedy and drastic remedy.

“The reports and opinions elicited by the publication of the Bill, as introduced in 1883, and as revised in 1884, furnished the Select Committee with very valuable materials, in addition to those already accumulated, for deciding on the various contested questions, and the result has been a report with which neither party is fully satisfied. This dissatisfaction has been forcibly expressed in the recorded dissents, some of which blame us for what we have done, while others find fault with us for what we have left undone. Some censure us for needlessly and recklessly interfering with the existing state of things, others for having stopped far short of what was necessary to correct its evils. These contradictory animadversions raise a strong presumption that the majority of the Committee has avoided extreme measures on either side, and has turned a deaf ear to the songs of the sirens that, often with more vociferation than melody, attempted to lure us from what will, I hope, be found to be the course of prudence and of safety.

“Nor can this moderation be justly condemned so long as it effects the essential objects of the Bill. If there is one point more than another with which we have been impressed in the course of our deliberations, it is that the

Government of Bengal is far behind other Governments and Administrations in the possession of accurate information respecting the condition and relations of the agricultural community. The existence of the Permanent Settlement relieved that Government from the necessity in its own pecuniary interest of making a record of rights in land—a measure the importance of which was realised at an early period in those provinces where settlements of land-revenue recurred at periodical intervals; and the mode of collecting the revenue by the single process of selling the defaulting estate at head-quarters deprived it of an agency in the interior of the districts, charged with the duty of making itself and its principals thoroughly acquainted with the landed classes, and all facts bearing on their condition. This being so, we felt that we were travelling along a somewhat dark road, and that a safe arrival at our destination was not likely to be achieved by rapid driving. The revised Bill undoubtedly does not go as far in the direction of tenant-right in its broadest sense as the Bill originally introduced, but it provides, I believe, adequate remedies for evils the existence of which is undoubted. It strengthens the defences of the raiyat at points which have proved to be weak; it does not provide him, at the expense of the landlord and possibly to his own destruction, with torpedoes to ward off attacks which there are no good grounds for anticipating.

“My hon’ble friend Sir Steuart Bayley has explained clearly and at length the changes we have made in the Bill as introduced, and the reasons which led us to make them. I shall not, therefore, weary the Council or prolong what is likely to be a protracted debate by following him step by step over the same ground. The importance of the provisions respecting the occupancy-right will however justify my dwelling on them for a short time even at the risk of repeating in feebler language what has been said about them by my hon’ble friend; and in what I shall say I have in mind the objections of those who think we have done too little for the raiyat rather than of those who consider that we have done too much. My hon’ble friend the Maharájá, who is to speak after me, will, no doubt, put this last class of objections as strongly as they can be urged, and I have equally little doubt that most of the speakers who have to follow him will fully answer his objections on this score.

“The land of Bengal is divided into 110,456 estates, owned by about 130,000 proprietors; subordinate to these proprietors come a body of middlemen whose numbers can be only guessed at; they are probably about a million. Lastly, there are 10 millions of raiyats. Of these last, occupancy-raiyats form by far the most numerous and important class. About their numbers also there is much uncertainty; the lowest estimate I have seen puts them at 60 and the highest at 90 per cent. of the whole number of raiyats, and, being the

1885.]

[*Mr. Quinton.*]

permanent agency by which the cultivation of the soil is carried on, they are the backbone of the agricultural organism of the country. It is clear from this that the provisions respecting them will have effects far more wide-reaching than those relating to the other classes of the agricultural population, and that if we have failed in adequately protecting the rights essential to their welfare, we have failed in the most important portion of the duty laid upon us. To show that we cannot justly be reproached with such failure I shall, following the example set by my hon'ble friend, ask you again to consider how the Bill found the occupancy-raiyat and how it has left him.

“The constituent elements of a tenant-right theoretically perfect are fixity of tenure, fair rent and free sale—the three F's. I need not enter upon an economical dissertation on the relative importance and value of these three principles. My hon'ble colleagues are probably much better able to instruct me than I them on the subject. We had, however, to consider in Select Committee to what extent these principles should be given effect to in our provisions respecting occupancy-raiyats.

“After long discussions and some fluctuations of opinion we came by different roads to the conclusion that in respect of free sale—or the power of transfer—the law with one exception, to which I shall allude more fully when dealing with fixity of tenure, should be left as it is. We were fully conscious of the stimulus to enterprise and improvement of the land which the power of raising money on the mortgage of his holding might give to a frugal and industrious tenant, but when we came to apply the principle generally, we found the risks attendant on suddenly enlarging in this way the credit of a weak and impoverished tenantry like that of Behar so great, and the difficulties in other localities of conceding to the landlords a veto upon the practice without strangling a healthy and rapidly-growing custom which is, we believe, of great public benefit to be so insuperable, that we determined to follow the cautious advice of the Famine Commissioners, and allow the right to be governed as at present by local custom.

“Those gentlemen write as follows on the subject of transfer in Bengal :—

‘Though on the whole we regard the general concession of the power of sale of those* rights to be expedient and ultimately almost unavoidable, the immediate course to be followed by the Government must no doubt be to a great extent governed by local custom. Where the custom has grown up and the tenants are in the habit of selling or mortgaging their rights in land, it should certainly be recognised by law, and where it has not it may be questioned whether the law should move in advance of the feelings and wishes of the people.’

* *i. e.*, occupancy.

“ Article 41 of Mr. Justice Field’s Digest states that under the existing law the holding of an occupancy-tenant is transferable by custom, and that in such cases no registration in the landlord’s sherista is necessary. We, by section 183 of the Bill, expressly save customs, usages or customary rights not inconsistent with the Act, and by an illustration to that section call attention to its effect on the usage of transferring occupancy-holdings without the landlord’s consent. My hon’ble friend Mr. Amír Alí has I observe, an amendment on the paper proposing that we should go much further in this direction than we have done. The discussion on this will give an opportunity for a fuller statement of the reasons which actuated us than I need now trouble Council with. So far as regards free sale we have left the position of the occupancy-raiyat unchanged.

“ Under Acts L of 1839 and VIII of 1869, a raiyat who claimed occupancy-right in any land was obliged to prove that he had held that land for 12 consecutive years immediately before the dispute arose. The unexpected effect of this provision was to make the acquisition of the status depend upon the will of the landlord, who had merely to shift the tenant about from one field to another, or, simpler still, to have the patwári’s papers, which were the chief evidence the Courts had to go upon, manipulated so as to show a change in the tenant of the holding or of some of its constituent fields. By either of these measures he might prevent the accrual of the occupancy-right, or defeat it when it had accrued. The Bill renders these methods of getting round the intention of the law, if not impossible, at least a matter of great difficulty. Occupancy-right will henceforward depend, not on the holding of any particular land for 12 years, but on holding as a raiyat for that period any land in the village in which the right is claimed. To prevent the accrual of the right the landlord must turn the raiyat out of the village altogether—a much stronger measure and probably more unprofitable than shifting him about from field to field within the village; while, on the other hand, the raiyat will find it much easier to prove that he has held some land in the village for 12 years than that he held the same land for that period. The same reasoning applies to the falsification of the patwari’s papers. Such falsification will now be made more difficult to effect and more easy to detect. All raiyats are practically declared to be possessed of the occupancy-right in their holdings whose tenure of any land in the village as a raiyat has lasted for 12 years from the 2nd of March, 1871, or any subsequent date; so that no amount of shifting within the village will now avail to extinguish the raiyat’s occupancy-right in land held by him, and no tampering with village-papers short of omitting the raiyat’s name altogether will be effective for the same object.

1885.]

[*Mr. Quinton.*]

“Besides this we provide further that all raiyats holding land shall in case of dispute be presumed until the contrary is proved to have held all or part of it for 12 years—a presumption of which the raiyat has not hitherto had the benefit, though it is, in our opinion, based upon existing facts.

“Again, under the present law, occupancy-rights could not be acquired in land known in different parts of the country as *sír*, *zírát* and *khámár*. We have reason to believe that in many localities this reserved area has been unjustly and illegally extended to the injury of the raiyats. We have laid down strict rules for the guidance of the Courts in determining what is *khámár* or *zírát*, and have stopped the growth, after the passing of the Act, of the area in which raiyats are debarred from acquiring rights of occupancy.

“These provisions constitute a great advance upon Act X of 1859, and facilitate the acquisition of the occupancy-right far beyond the present law. I shall not anticipate the discussion on the amendment of my hon'ble friend Mr. Reynolds, by alluding to the still greater facilities which the addition of the words 'estate' to sections 20 and 21 would afford. I hope I have shown that even if that amendment be not accepted the gain to the tenant from the provisions of the sections as they stand is very great.

“Act X of 1859 left it open to a landlord and tenant to defeat the accrual of the occupancy-right or to extinguish it when it had accrued by written contracts. The mischievous effects of this have been so fully explained to Council both to-day and on previous occasions when the Bill was under debate, that I need not now dilate upon them. Suffice it to say that we have in express terms declared to be null and void contracts of this nature, whether made in the past or in the future. The law will no longer give effect to contracts whereby a helpless tenant signs away his legal rights at the dictation of a powerful and unscrupulous landlord.

“The existing law allowed, of the ejection of an occupancy-raiyat from his holding if the amount of a decree against him for arrears of rent was not paid within 15 days. This provision furnished landlords with a ready weapon for destroying the occupancy-right. It gave them a direct interest in dealing oppressively with their tenantry, and it has not been everywhere allowed to remain a dead-letter. The Bill puts an end to all this. It recognises the principle that the occupancy-raiyat has a valuable interest in his holding which the landlord cannot be allowed to confiscate, by enacting that an occu-

pancy-raiyat shall not be liable to ejection for arrears of rent, but that his holding shall be liable to sale in execution of a decree for such arrears, and that the rent shall be a first charge on the holding. The interest of the tenant will thus be saved from forfeiture when he is unable, from calamities of season or other misfortune, to meet his landlord's demands, and he will obtain so much of the market-value of it as remains after the claim for rent has been fully satisfied.

“ Here also we considered that the tenant should be debarred from contracting himself out of his rights, and we have provided that no contract, whether before or after the passing of the Act, shall entitle a landlord to eject a raiyat otherwise than in accordance with the provisions of the Act.

“ In close connexion with the point on which I have been dwelling is the legal power conferred upon the tenant in Bengal for the first time by this Bill of making improvements on his holding and of being recouped for such improvements when ejected by the landlord in the shape of compensation, or when his holding is sold in execution of decree or otherwise, by the enhanced price paid for the value added to the holding. This principle of compensation for tenants' improvements was adopted in Oudh in 1868, in the North-Western Provinces in 1873, and the extension of it to Bengal by the present Bill adds a strong bulwark to fixity of tenure for the occupancy-raiyat in that province. Taken with the other provisions respecting this element of tenant-right, to which I have been calling the attention of Council, it will place the Bengal occupancy-raiyat in a better position as regards fixity of tenure than that held by the corresponding class of cultivators in any other province of British India.

“ I now turn to the question of enhancement, which is of no less importance. Fixity of tenure alone is of little use so long as the rent at which the tenant holds can be frequently and capriciously enhanced; on the other hand, nothing affords a stronger screw for squeezing successive enhancements out of a tenant than the arbitrary power of ejection. An occupancy-tenant will under the threat of ejection from his holding—generally the sole means of support for himself and his family—agree to enhancements which, at first small, gradually raise the rent to an amount which leaves him the minimum sufficient to subsist on. The two rights hang together and re-act on each other.

“ By giving greater fixity of tenure we have restricted the landlord's power to exact capricious enhancements, and our next duty was to regulate the powers of enhancement directly conferred on him by law. These were twofold—enhancement by contract and enhancement by suit. The present law places no restric-

1885.]

[*Mr. Quinton.*]

tion on enhancement by contract. This was a point on which the Local Government laid very great stress, and at their instance we have provided that all contracts for the enhancement of rent must be registered, that the enhancement is not to exceed the previous rent by more than two annas in the rupee, or $12\frac{1}{2}$ per cent., and that the rent is to be fixed for the same term as is fixed in case of enhancements by suit.

“The provisions of Act X of 1859 relating to enhancement by suit, according to the admissions of the tenant’s friends and the complaints of his enemies, have proved for the most part unworkable—a state of things which my hon’ble friend Mr. Reynolds has described as a public scandal. If the law recognises the landlord’s right to enhance, it should certainly not attach to that right conditions which render the exercise of it impossible. My hon’ble friend Sir Steuart Bayley has explained fully the alterations we have made with the object of removing this defect in the present law, and I shall confine myself to showing how far we have endeavoured to provide that the increased facilities for enhancement afforded by the Bill shall not operate unfairly or oppressively as regards the raiyat.

“At starting I may observe generally that, the easier enhancement by due process of law is made for the landlord, the less inducement he will have to resort to irregular and oppressive methods for securing the same end—a result of no small gain to the tenant when we find in some localities rents doubled by irregular enhancements in 16 years, and raised 500 per cent. by the same means in some estates within a comparatively recent period.

“The first of the grounds on which enhancement is authorized by the present law is ‘the prevailing rate’. This ground I should gladly have seen omitted from the Bill. It appeared to me that, looking to the impossibility of now discovering a parganá rate in most parts of the two provinces, and considering the abuses which have been proved to have attended the working of this ground of enhancement and the greater facilities afforded to the landlords for enhancements on other grounds, they would have had no just cause of complaint if this had been abolished. The question, however, was decided otherwise by the Select Committee, and their decision has been accepted by the Executive Government. But while so deciding they felt that some attempt should be made to prevent the possibility of the manufacture of bogus rates to be used as a lever for raising rents all round: and have laid down a rule, to be found in section 31, which will, we hope, be effective for this end. My hon’ble friend Mr. Reynolds has an amendment on the paper which he considers will

be much more effective for the same purpose. Both the section and the amendment agree in providing that there must be a substantial difference between the rent sought to be enhanced and the prevailing rate, and that the prevailing rate is to be ascertained with reference to what has been actually paid for not less than three years, and both enable the tenant to show as a bar to enhancement that there is a sufficient reason for his holding at such an exceptionally low rate. Thus, whether the amendment be accepted or not, the tenant who has been allowed to hold at a low rate for special reasons will be protected from enhancement; only rents which are substantially below the prevailing rate will be enhanced, and the prevailing rate must be not a bogus rate, but one actually paid for such a period as will be a guarantee for its *bonâ fide* character.

“The section also provides for an enquiry by a Revenue-officer as to the prevailing rate if the Court cannot otherwise ascertain it satisfactorily. I need scarcely point out to the Council that the facts are more likely to be elicited by such an enquiry than by the evidence of witnesses whom the contending parties bring forward:

“I cannot understand how these provisions can be objected to as being but feeble checks on the abuses which have hitherto attended the working of the prevailing rate as a ground of enhancement. The omission of them and the retention of the prevailing rate in its present form would, in my mind, be much more disadvantageous to the raiyat.

“The next ground of enhancement, namely, a rise in the average local prices of staple food-crops during the currency of the present rent, has been substituted for a rise in the value of the produce of the land for which enhanced rent is claimed. The reasons which led to the change have been fully explained by my hon'ble friend Sir Steuart Bayley. The landlords complained that the law in this respect had become a dead-letter from the difficulty of working the rule of proportion laid down in the great rent case, and to meet this complaint, which appeared to be well-grounded, the present scheme was devised. The Select Committee believed it to be sound in principle, and considered that they could guard against its operating to the injury of the tenant by the special provision which gave an enhancement in proportion, not to the whole rise of prices, but only to two-thirds of such rise, thus allowing a deduction of one-third to cover increased cost of cultivation, and still more by the general rule, to which I shall allude hereafter, by which enhancements on all grounds are to be qualified.

1885.]

[Mr. Quinton.]

“The change has not given satisfaction to either party, and I see that my hon’ble friend Bábú Peári Mohan Mukerji has placed on the paper an amendment proposing to revert to the old ground of enhancement which formerly proved so ineffective. If the old rule in all its clumsiness be restored at the request of the landlords, the advocates of the tenants will no doubt rejoice, and the landlords must expect little sympathy with future complaints as to the rule of their choice being unworkable. If the scheme of the Bill be retained, the tenant gets the benefits of the limitations to it which I have above referred to.

“Next, enhancement is allowed by suit on the ground of landlords’ improvements, the justice of which cannot be gainsaid. Under the existing law this ground of enhancement, from the difficulty of proving the making and value of the improvements, must have operated unfairly to both parties. On one hand, it threw obstacles in the way of a landlord establishing his rights to enhancement, on the other it held out inducements to the fabrication and production of false evidence in support of claims which the raiyat as the weaker of the two parties could not always resist. The provisions of the Bill respecting the registration of landlords’ improvements, and as to the considerations which are to guide the Courts in determining the value of the improvement to the tenant, will prevent enhancements being made for improvements which are not *boná fide* and which do not add to the value of the tenant’s holding. No enhancement can be successfully claimed for an improvement which is not registered, and which does not increase the productive powers of the land ; and in determining the amount of the enhancement, the Court must have regard to the cost of the improvement, so as not to give the landlord an inordinate increase of rent for what cost him but little, to the cost to the cultivator required for utilizing it, to the existing rent, and to the ability of the land to bear a higher rent.

“Lastly, comes the ground of enhancement on account of increase in the productive powers of the land due to fluvial action. This is a modification of the existing law, which contains no qualification as to the cause which gives rise to the increase in productive powers. My hon’ble friend Sir S. Bayley has explained that all other causes may be expected to fall under those which bring about a rise of prices, and, if they be not so, it is clear that the modification is in favour of the raiyat. In no case is the landlord to receive more than one-half of the increased increment so brought about.

“ Among the grounds of enhancement under the existing law was the circumstance that the quantity of land held by the raiyat is proved by measurement to be greater than the quantity for which rent was previously paid. This provision appears in a different place in the Bill for reasons which were given in the Statement of Objects and Reasons, but an important alteration has been made in it for the benefit of the raiyat by the restriction that the landlord is not to measure more than once in ten years. In the absence of a cadastral survey such frequent measurements are a preliminary to a demand for increased rent, and give rise to serious disputes and much bitter feeling. Further, by requiring the Court, when determining the area for which rent has been previously paid, to have regard to the origin of the tenancy, the length of time during which it has lasted without dispute, local usage and like considerations, we have endeavoured to guard against enhancements which were really a rackrent being granted on this plea.

“ I have thus gone through the grounds of enhancement recognised by the Bill, and have shown that they are each qualified by special restrictions to prevent their operating so as to weigh down the raiyat. We have, it is quite true, removed the public scandal to which I have already adverted, but in so doing we have not necessarily, we believe, subjected the tenant to rackrenting.

“ Besides the limitations on the working of each rule, we have laid down for all cases the broad principle that the Court shall not in any case decree an enhancement which is under the circumstances of the case unfair or inequitable. It has been objected that this rule, however broad and benevolent in intention, will prove from its vagueness of no practical value for the protection of the tenant, and that we should have defined precisely in the Act for the guidance of the Courts ‘ a fair and equitable rent ’. To such objections I can only say, try your hand at such a definition. The many able officers who have taken part in this long controversy from its first beginning, the Government of Bengal, the Government of India, and I may add the Imperial Parliament, have all failed to produce a definition of a fair and equitable rent which could be safely acted on by the Courts; and our Committee need feel no shame at being unable to do that to which they proved unequal. The Courts must be left to deal with each case on its own merits, and to exercise a judicial discretion arrived at after a careful consideration of all the circumstances. That such a discretion will be inoperative in checking unfair and inequitable enhancements I cannot bring myself to believe.

1885.]

[*Mr. Quinton.*]

“ But although we were unable to lay down a rigid rule for determining a fair and equitable rent which would suit the varying circumstances of the six or seven millions of occupancy-raiyats throughout the two provinces, there was one matter on which we were nearly all agreed, that a rigid rule was both expedient and necessary. We recognised fully the landlord's right to enhance the rent of his tenants, and we authorized him to bring suits for the purpose on certain specified grounds, but we were satisfied that when he had thus attempted to enhance a tenant's rent, and obtained his enhancement, or failed to obtain it because there were no good grounds for it, the tenant should not for a considerable period be subjected to the worry and expense of a similar suit, or to threats of a similar suit, which would be equally effective for the landlord's object. This term was fixed in the Bill as introduced at 10 years, thereby following the precedent of the North-Western Provinces Act. In the Bill now before Council the term has been extended to 15 years—a term which, in my opinion, does not err on the side of excessive length. This provision gives the raiyat rest for 15 years. He cannot, as at present, be harassed by annual notices of enhancement which threaten to absorb the fruits of his industry and prevent his applying his full skill and labour to the cultivation of his holding. He has now the assurance that, let the karindár or thikádár bluster as they may, so long as he pays the rent last settled, no legal pressure can be brought to bear on him; and this security and the independence engendered by it nerve him to resist all the more stoutly demands which have no legal warrant. I cannot hold this provision to be a feeble palliative; on the contrary I believe it to be a strong shield against unjust enhancements.

“ We have also enabled the Courts to temper the rigour of their decrees by empowering them to direct that the enhancement shall be progressive if they think hardship would be the effect of giving full effect to it at once.

“ The provisions as to the reduction of the occupancy-raiyat's rent are much the same as in the existing law, except that reduction, like enhancement, is made to depend on variation in the prices of staple food-crops. The same reasons which justified the adoption of this as a ground of enhancement warrant its retention as a ground of reduction. The arguments which tell for or against it in the one case are equally applicable to the other. If it is inequitable that a landlord should obtain an enhancement of rent on account of a general rise in prices or fall in the value of money as indicated by a rise in the price of staple food-crops, it cannot be contended that the tenant's rent should be reduced for this reason. On the other hand, those, of whom I am

one, who hold that a rise of prices is a proper ground for enhancement of rent are ready to admit that it is an equally strong ground for reduction.

“ We, however, go one step further than the existing law in this matter. We not only allow reduction for suit on specified grounds, as at present, but we provide a remedy for an evil which has already proved a scandal to the administration, namely, irregular enhancements of rent carried to such an extent as to endanger the welfare of the locality or public order. Under the former class fall those enhancements up to 500 per cent. to which I have already alluded, and under the latter those which brought about the Pubna and Mymedsingh riots. With such evils the ordinary course of law is an engine too cumbrous and too tedious in its operation to deal effectively. People cannot be allowed to perish, or on the other hand to spread destruction over whole parganás while cases are being tried by the ordinary tribunals and fought out in appeal to the High Courts. The remedy must be prompt and drastic. We have accordingly empowered the Local Government, when it is itself satisfied and can satisfy the Governor General in Council that such a remedy is needed, to apply it by enabling a Settlement-officer to settle all rents and to reduce rents in any specified area generally or with reference to specified cases or classes of cases, if in his opinion the maintenance of existing rents would on any ground, whether mentioned in this Act or not, be unfair or inequitable.

“ The power is not one to be lightly exercised, but the knowledge that Government has in its hands such a weapon must operate as a check on the oppressive exactions of grasping landlords.

“ I have, I fear to the great weariness of my hearers, enumerated in detail the provisions respecting the rent of the occupancy-tenant, because it is on this point mainly that we are accused of having done least for him, or rather of having rendered his position worse than it is at present; but the objection underlying the arguments of some at least of the assailants of the Bill on this ground is not that we have done too little for the raiyat but that we have done too much for the zamíndár. They oppose really any ground of enhancement which can be made workable. They think that the raiyat will be better off by taking his chance under the existing law, which is so difficult for the Courts to give effect to, than if subjected to rules, however guarded, which can be made a reality. They are loud in their clamours against the restrictions by which it is proposed to qualify the rules in the Bill, but they have failed altogether to suggest others of a more satisfactory nature, or to substitute grounds of enhancement which would be free from the abuses to which they

1885.]

[Mr. Quinton.]

believe that these will be liable. We, on the contrary, think that no grounds of enhancement should be offered to landlords which the Courts are unable to work ; and, while recognising reasonable and workable grounds of enhancement in the Bill, we have, to the best of our ability and judgment, made such provisions as will prevent their working unfairly or inequitably. By doing so we withdraw a strong encouragement hitherto held out to irregular enhancements, and, instead of a fitful and uncertain protection arising from the difficulty of working the rules, we give to the tenant the security that the rules cannot be worked to his injury.

“As regards another class of objectors who describe the restrictions we have imposed as ‘feeble palliatives impotent to restrain the evils which the working of the enhancement sections is calculated to produce,’ I hope I have satisfied the Council that this description does not accurately represent such measures as the modification of the rule respecting the prevailing rate, the deduction of one-third of the increase claimable on account of rise of prices, the provisions that only *bonâ fide* improvements by landlords and the benefits flowing from them to the tenants can authorise enhancement, the precautions to guard against a tenant’s rent being unfairly enhanced on re-measurement, the general rules as to all decreed rents being fair and equitable, as to rents once settled being undisturbed for fifteen years, and as to progressive enhancements, and lastly the power reserved to the Local Government to send in the Settlement-officer to reduce rents without reference to the grounds specified in the Act when the local welfare or public order require the adoption of such a course. If these be feeble palliatives it is difficult to say by what other restrictions the grounds of enhancement could have been qualified which would not amount to a declaration that those grounds might remain on the Statute-book as a reasonable concession to landlords, but that in the interests of the tenants no practical effect should be given to them.

“We have further, as explained by my hon’ble friend the mover, applied remedies to the abuses of the right of distraint, of the collection of rent by monthly instalments, of the power of bringing, or threatening to bring, frequent suits for arrears; and we have endeavoured, by rules respecting the delivery of receipts and statements of account, to furnish all tenants with materials for resisting unjust claims for arrears of rent. Though petty in appearance, these are matters which closely affect the happiness and welfare of the raiyat.

[*Mr. Quinton; The Mahárájá of Durbhunga.*] [27TH FEBRUARY,

“ Finally, we have by the Record-of-rights chapter laid the foundation of a system which will in time extend to Bengal the benefits which have elsewhere been found to follow in the preparation and maintenance of an accurate record of the rights of the different classes having interests in the soil. This system cannot be brought into force over the whole country at once, and must of necessity be gradual in its operation, but as it spreads it will dispel the darkness as to agricultural facts which has so long covered these provinces, will determine the mutual rights of landlords and tenants where they are uncertain, and by furnishing both with a correct measure of those rights will increase the value of landed property, will remove causes of strife, will deprive the powerful of pretexts for enhancement, and will strengthen the weak to withstand oppression.”

The Hon'ble THE MAHÁRÁJA OF DURBHUNGA said :—“ I regret that I cannot support the motion of the hon'ble member that the Bill should be taken into consideration. In my opinion it is not submitted to the Council in a form in which we can reasonably be asked to consider it. It comes before us disapproved and discredited by all parties. The raiyats are as much opposed to it as the zamíndárs ; and are we, who are legislating in the interests of the zamíndárs and the raiyats, altogether to disregard their wishes and their opinions ? Is there a single raiyat or a single zamíndár in the country who desires that this Bill should be passed ? And if it is an undoubted and an undisputed fact that neither zamíndárs nor raiyats desire this measure, will this Council be justified in forcing it upon them ? Are we to suppose that zamíndárs and raiyats are alike ignorant of their true interests ? Surely they may be trusted to know whether a law will injuriously affect them or not. But if we are to disregard the expressed wishes of the parties who will be affected by the proposed legislation, upon whose opinion is the Council to rely ? Are we to rely on the Select Committee ? The Select Committee consisted of eleven members, but out of this number only three have signed the Report without reservation. All the other members have on most important particulars dissented from the Report. The Report, therefore, and the Bill, which has been drafted in accordance with the report, is practically the Report and Bill of three members only : and two out of the three hon'ble members have no practical experience of Bengal. The Bill, therefore, comes before us discredited and disowned by the majority of the Select Committee itself. If the Select Committee had been unanimous in their recommendations, some sort of justification might have been found for proceeding further with a measure which has been so universally condemned. But with this great divergence of

1885.]

[*The Mahárájá of Durbhunga.*]

opinion among the members of the Select Committee, there seems to me no other alternative but to withdraw the Bill. It cannot be expected that the members of this Council should accept the Report of the Select Committee as an authoritative document. If the members of the Select Committee are not themselves agreed as to the principles of the Bill, is it reasonable to expect that this Council should act upon their recommendations? If the Bill in its present shape is proceeded with, all the questions which engaged the attention of the Select Committee will necessarily be re-opened in this Council, and every hon'ble member will have to form his independent opinion upon them. But here an initial difficulty presents itself. There is absolutely no reliable information upon which you can proceed. The Select Committee had no evidence before them. They acted upon official opinions, which were generally conflicting and often misleading. My hon'ble friend Mr. Hunter has well described in his dissent the difficulty in which the Select Committee was placed. 'The Select Committee,' he writes, 'has been asked to deal with the entire relation of landlord and tenant in Bengal without being furnished with any body of cross-examined evidence to guide its deliberations. Opinions and statements, often conflicting and sometimes contradictory, have been furnished to it in large numbers. But it has not had the means of ascertaining which of these opinions and statements would have borne the test of cross-examination, or how far their discrepancies might have been reconciled. Absence of such data is the more to be regretted in a measure affecting land right in Bengal, for in Bengal, almost alone among the provinces of India, there is no central department of statistics * * * which might in some measure have compensated for the evidence of witnesses heard in the districts. * * * The result has been to leave in my mind an extreme uncertainty in regard to several important classes of rights with which the Bill deals.' Is this Bill, then, my Lord, ripe for discussion? Are we to legislate in uncertainty? Are we to pass a measure which will revolutionize and disorganize the whole rural economy of the country, without having any reliable data before us? From the very first the zamíndárs have demanded an enquiry. They deny the facts and the assumptions upon which the Government of Bengal has proceeded. I will give one or two illustrations. The justification of the occupancy clauses in the Bill was based upon the fact that the zamíndárs of Behar were in the habit of shifting their raiyats to prevent the accrual of occupancy-rights. This fact, in their memorial to the Secretary of State, the zamíndárs of Behar emphatically denied. From my own experience I can affirm this denial. I can state as a fact that such a custom is not prevalent in Behar, and that I have never even heard of its existence, and yet the

whole of the legislation with regard to those occupancy-rights has proceeded on an assumption which is absolutely baseless. Another charge made against the zamíndárs of Behar was that they rack-rented their raiyats; that rents were so excessive that the raiyats were left without a reasonable margin for subsistence. In their memorial to the Secretary of State the zamíndárs of Behár conclusively, as I think, showed that the charge was baseless, but the restrictions on enhancement have been mainly introduced into the Bill on the assumption that the charge is true. Is this fair upon the zamíndárs? Have they not a right to ask that their rights shall not be taken away on mere assumptions? Have they not a right to demand that the charges brought against them shall be sifted and examined before the legislature is invoked against them? But the Bill itself contains the best commentary on this charge. These raiyats, who are supposed to be so ground down and oppressed, are allowed to demand from their under-raiyats 50 per cent. more than they themselves pay. You are asked to restrict the demand of the zamíndár upon the raiyat, and at the same time to allow the same raiyat to demand for the same land 50 per cent. more than he pays himself. Can any inconsistency be greater? I have merely given these illustrations by way of example to show that we are legislating in the dark. The foundations of the Bill rest upon facts which are alleged and denied, and upon assumptions which are challenged as untrue. We have no ascertained facts before us upon which we can possibly proceed. There is assertion on the one side and denial on the other, and the truth has yet to be ascertained. If this is a correct description of the position in which we stand, is it possible to proceed with the Bill? How are we to decide between conflicting assertions? We may repeat in this Council the interminable discussions of the Select Committee, but in the absence of ascertained facts we shall not be able to arrive at any satisfactory conclusion. To me it seems amazing that we should be considering the matter at all. Among the many millions of people who will be affected by the Bill not a single voice has been raised in its favour. If it is passed, for whose benefit will it be passed? It surely cannot be wise to pass a Bill which will benefit no one and irritate every one. I look upon the Bill as disastrous in every point of view. It will be disastrous in a political point of view, because it will be regarded as a flagrant breach of the Permanent Settlement, and will therefore shake the confidence of the landed proprietors in the Government. It will be disastrous to the zamíndárs, because it will not only deprive them of their rights but will render zamíndári management for the future absolutely impossible. It will be disastrous to the raiyats, because it will give rise to endless disputes and lead to interminable litigation. For these reasons I am strongly of opinion

1885.]

[*The Mahárájá of Durbhunga ; Mr. Evans.*]

that the Bill should be withdrawn, and that any measure which may hereafter be proposed should be drawn up on the lines of the present law, instead of sweeping away existing landmarks and disorganizing the whole fabric of rural society. I shall, therefore, vote against the motion that the Bill be taken into consideration."

The Hon'ble MR. EVANS said:—"I have to apologise to the Council and to Your Excellency for not being fully prepared to speak to-day on this important measure. Knowing the strong opposition of the Mahárájá of Durbhunga to the Bill, I not unnaturally counted upon his speech taking up the rest of this afternoon. I can only ask the indulgence of the Council in case my observations should in some respects be discursive, and in other respects insufficient, considering the importance of the measure before the Council.

"Your Excellency can well believe that it is with great reluctance that I have taken any active share in this legislation. My own heavy professional engagements and the active opposition of many of my personal friends to this measure all combined to make me desire to avoid it. Believing, however, as I did and do, that some legislation on the subject was, in consequence of the admitted imperfections of the Act of 1859, necessary for the welfare of the country, I did not feel myself at liberty to decline to give what assistance I could to the undertaking.

"In this task the Select Committee have been beset by many difficulties, of which perhaps one of the greatest is the initial mistake that was made in not having two Bills, one for Behar and one for Bengal. I have always thought this a mistake, and I believe other members of the Select Committee have thought the same.

"In Behar, as a rule, the landlord is strong, the raiyat weak. In most parts of Bengal, notably in the Eastern Districts, the raiyat is stronger than the landlord. It was, however, decided by Government that the Bill was to be a general rent law, and not two special laws to meet the wants of the two provinces. We have done our best under these circumstances. But the result is unavoidable, that those whose eyes are mainly fixed on the poorest parts of Behar say we have not done enough for the raiyat, while those who mainly regard the condition of Eastern Bengal accuse us of having done too much for the raiyat and having done too little for the landlord. There have been very strong statements before us that in Behar, or portions of Behar, the raiyats are so rack-rented that they have absolutely no sufficient margin for subsistence; they are

described as having an actual insufficiency of food. If things are as described by some of the officers of Government, and if this state of things can be remedied by legislation, it would justify legislation of a most drastic character for the special local areas where these evils prevail. If it be shown that these evils arise from rackrenting, and can be cured by stopping enhancement altogether, or even by reducing the rents, it should be done by special legislation.

“ But all that we can do in laying down general rules for the regulation of the law between landlord and tenant is to provide such rules as shall prevent such a state of things arising where it does not already exist, and to arm the executive with power to interfere, if absolutely necessary for the public welfare, pending the further enquiries necessary for legislation of such an exceptional character. This I think we have done. My hon'ble friend the Mahárájá of Durbhunga denies that such a state of things exists among the raiyats in Behar, and it may be that the poorest class are sub-raiyats. It may be, again, that many of them are technically raiyats holding as such a very small portion of land, too small for the subsistence of themselves and their families, and eking out a scanty subsistence by holding land at a rackrent under substantial raiyats and by working as day-labourers. This state of things would require a different class of legislation. These considerations have led me to the belief that this question of peculiar special local areas must perforce be left to special legislation. It would be wrong to legislate for the sixty-nine millions in Bengal upon any idea that such was the case in general, or that such things prevailed to an extent which would justify us in offering a remedy by any general rules. Having said this much, I desire particularly to say that if such a state of things can be shown to exist, and to be capable of being remedied by legislative attempts, I for one am perfectly willing to adopt that special remedy which may be shown to be necessary. Before noticing the special provisions of this Bill, I desire to say a few words upon the history of the occupancy-right. The subject has been so exhaustively discussed on both sides that I can add little to what has been said, and what little I have to say arises mainly out of a fresh pamphlet recently published. I have here before me a pamphlet entitled ‘Proprietary Rights of the Zamindár,’ issued by the Central Committee of the Landholders of Bengal and Behar. I am glad to see from this work that upon one point we are agreed. In page 12 I find these words:—

‘ Under the customary law the resident or occupancy raiyat was entitled to hold his land so long as he paid the general rates which were settled for the village or parganá in which he lived : so far both sides agree.’

1885.]

[Mr. Eccles.]

“ We have this much to agree with at any rate, that, on the universal customary law of India, there is a fixity of tenure, so long as a man pays his rent; and the book goes on to say that the real point in the zamíndár’s opinion is the question of how he is to enhance, and it goes on further to say that the will of the zamíndár should be the sole arbitrator of the amount of enhancement, and it challenges us to show that at any time in Bengal since the time of the Permanent Settlement the ruling power has ever exercised the power of regulating the assessments upon the individual raiyats. No doubt, though by the institutes of Akbar, the relative proportions of the produce were settled between the cultivator and Government, yet, as Mr. Shore said, even when the Government professedly dealt with the raiyats, it was found impossible in practice to assess each individual cultivator, and so the distribution of the assessment was left in Bengal to the zamíndárs. But this is very different from a right to demand what they pleased. I certainly agree with the Court of Directors that it was ‘ a general maxim under the Moghul Government that the immediate cultivator of the soil, paying his rent, should not be dispossessed. This necessarily supposes that there are some measures and limits by which the rent could be defined, and that it was not left to the arbitrary discretion of the zamíndárs.’ It is, I think, quite evident that there was a right of some sort in the cultivator which was not illusory. There was some kind of right as regards the quantity of rent. The fact that it was the zamíndár and not the Sovereign that fixed the rent can be very easily accounted for. In a huge despotism like that of the Moghuls,—a central despotism,—powers to a very large extent were delegated to the Provincial Governments, which in turn delegated many of their powers to the great princes and the great zamíndárs; and we all know that these great princes and zamíndárs exercised the authority and the functions of Government, both civil and, to a certain extent, criminal as well; and therefore it came to pass that with regard to these matters of revenue over which there was no control by any Courts in those days, nor any written law, no redress could be had save possibly by petition to the Executive Government, which would, save in rare cases, receive little attention. So far as we know, no questions of rent were allowed to be discussed in the Courts, and the consequence was that the settlement of all questions *quoad* the raiyat was in the hands of the zamíndárs not as owners of the land (but as delegates of the Sovereign. It is admitted now that the zamíndár had really proprietary and hereditary rights; but how could he assert those rights? Could he go to a Court of law and ask for a decree against the Sovereign Power? He had to take what he could get from the Sovereign Power; hence it was that with a despotic Sovereign Power all rights must necessarily be uncertain in their

enjoyment. There was no tribunal to appeal to, and all proprietary rights were of a precarious nature. But we know that, however despotic a Government may be, rights of property must be recognised more or less. Subjects and rulers both recognise the existence of unwritten law and customs even under a despotism, and are generally guided by them, even though they often use their powers to trample on them. Therefore, I do not think there is anything in this objection, that the Sovereign did not directly fix the individual raiyat's assessment. If the Central Government was far away, the delegate was allowed to do what he liked. I think it comes to what Mr. Harrington says in his 'Analysis' that in the decay of the Moghul Power the ruling Power plundered the great zamíndárs, who were in turn forced to plunder the raiyats. That is, I think, the real explanation of much of the confusion which has been thrown upon this subject. When in later and more peaceful times the matter came to be examined, then the fact became clear, which is stated in the Report of the Parliamentary Committee of 1832, that—

'In the general opinion of the agricultural population, the right of the raiyat is considered as the greatest right in the country; but it is an untransferable right.'

"And they go on to say:—

'This part of the evidence before your Committee has been particularly adverted to, as it is of so much importance that the Government cannot be too active in the protection of the cultivating classes, for the vital question to the raiyat is the amount of the assessment he pays.'

"If this be so, we really find the position to be as follows:—It being conceded now that there is such a thing as a customary law giving such occupancy-rights, it follows that everybody who before the Permanent Settlement had held or reclaimed land in his own village, without exception, acquired occupancy-rights. What was the effect of the Permanent Settlement? It was a contract between the Government and the zamíndárs in which the Government gave the zamíndárs certain rights, and the Government had declared, so far as the Government could declare, that the zamíndárs, were the proprietors. But this cannot be said to make any alteration in the unwritten law, nor could it affect any persons who were not parties to the contract; and the case may be stated thus. The man who came in the next day after the making of that settlement, who claimed land or held land in his own village, was under the same old customary law as before, and by virtue of that law acquired a right of occupancy. The truth is that, at the time of the Permanent Settlement, Government settled their own disputes and quarrels with the zamíndárs. They were very numerous, and zamíndárs had just reason

1885.]

[*Mr. Evans.*]

to complain, and did in fact make the complaint heard in Parliament. The final settlement of all these difficulties as to the respective rights of Government and zamíndárs was come to in the Permanent Settlement. The Government, finding that the matter of the rights of the raiyats was an obscure and complicated matter, which they could not go into on account of its intricacies, left it alone, because they thought it could probably be settled by agreement between the zamíndárs and their raiyats, much in the same way as they had settled the difficulties between themselves and the zamíndárs. But what was the position? The raiyats continued as they came in to cultivate their lands and to acquire the same rights under the same old customary law, which was never abrogated save so far as it might be affected by the express provisions of any of the Regulations. The only difference was that, whereas before they acquired their rights against the Government and zamíndár, after the Permanent Settlement they acquired the same rights against the zamíndár, as representing his own and the Government title, and that the Government had left only a perpetual charge on the land with the duty solemnly reserved to protect the raiyats, and to legislate when they thought it necessary for their protection.

“ But the hoped for result did not come to pass. The raiyats and zamíndárs did not settle their respective rights amicably, and so it befell that, at the end of 60 years, the legislature found it necessary to lay down some rules in regard to the enhancement of the rates of rent which were demandable from the raiyat. Now one of the main arguments of this pamphlet is that the legislation of 1859 was a breach of the Permanent Settlement; and they make it out in this way. They say that before the Permanent Settlement they had the right to demand rent according to their own arbitrary discretion. Shorn as they have been of their civil and criminal jurisdiction, and no longer representing the ruler's power, they still contend that their will is the measure of enhancement, and that the effect of the reign of law which the British Government have introduced is that the Courts ought to register their arbitrary demands as decrees, and that the resistless might of the executive should be at their call to enforce their decrees and protect their persons. It is upon this view of their rights that the pamphlet really proceeds. It is upon that ground, they say, that we departed from the Permanent Settlement in that Act of 1859. I deny that altogether. I think it was clearly competent to the Government to legislate as it then did. But it is idle to go into a question like that, because, if they once admit that the Government had the power, in 1859, to make these rules to regulate the rent, and to define the occupancy-raiyat, they cannot deny that this Council has in 1884 the right to amend the definition and the rules. If

they rest on the argument that the legislation of 1859 was improper, we can only say that that question is long ago concluded by authority, and that it is useless to discuss it save as a forensic exercise. As regards the position in 1859, it stood very much in this way. Nothing had been done for 60 years, and it was found that matters were not satisfactory. The legislature came to the conclusion to make rules. They first desired to define who had the right of occupancy, so as to enable the Courts to ascertain that fact. Then they proceeded to make what they considered to be fair and equitable rules to guide the Courts in decreeing enhancements of the rents of occupancy-raiyats, and they made an express reservation that the occupancy-right should not accrue in respect of any land as to which the raiyat had contracted expressly that he would give it up at a certain time. As regards those raiyats who had not a right of occupancy, it was decided that they must give up the land on reasonable notice; but that so long as they were allowed to remain, no more than a fair and equitable rent could be demanded from them.

“These were the main provisions, but complaints were soon heard. The zamíndárs complained that the grounds of enhancement were unworkable, and that they found moreover often insurmountable difficulties in obtaining in fact the enhancement to which they were in theory entitled; while those who had at heart the interests of the raiyat complained that the effect of the definition as construed by the Courts was to defeat the intention of the framers of the Act, and to shut out from the status of occupancy a large number of raiyats who were entitled to it. It was complained of on both sides. The raiyats, or those who spoke for them, complained that they had very great difficulty in proving the occupancy-right. They pointed out the immense difficulty of proving 12 years' continued cultivation of the same plot of land, in that there were no fences as in England. The raiyat might be holding five or six little plots in a large plain of rice-land divided into plots by temporary ridges of mud. The only documentary evidence, measurement-papers and zamíndári records of rents and holdings were all in the hands of the zamíndárs and liable to falsification by zamíndári servants. They also complained in respect of various portions of Behar that there was a practice of shifting them from one village to another. Now I understand my hon'ble friend the Maharájá to say he has ascertained that that is not done for the purpose of preventing the accrual of the occupancy-right. That may be so, but this much is certain, that for some reason or other the raiyats in many, if not most, parts of Behar were unable to avail themselves of the protection of the occupancy clauses even to the limited extent which their brethren in Bengal could and did. On the other hand, the zamíndár complained,

1885.]

[*Mr. Evans.*]

and complained rightly, that he could not get the enhancement he was in theory entitled to. We all know the immense difference between what is the result in theory and fact. It was one thing to discover the motive power of steam and another to construct the locomotive engine. The data were left to the Courts to discover, and unless the Courts found the data it was impossible to work the rules at all; and in working these rules there were very many difficulties. I will not go into them in detail; they are familiar to all who are conversant with the subject. Now it is a very demoralising state of things when we dangle before a man's eyes his rights, and assure him they are his rights, and send him to our Courts to enforce them, and then provide the Courts with such rules that the odds are against his getting them. Perhaps the most workable of the rules was the 'prevailing rate' as interpreted by the Courts, but the vagueness of the expression 'places adjacent' rendered this uncertain. Besides, if the 'prevailing rates' were too low, he got no remedy under this head. It has been said that it was the outcry of the zamíndárs on this head, and on the score of difficulty in realising rents, that led to this legislation, and that we have forgotten this, and legislated in favour of the raiyat instead. But we have tried to grapple with both the evils above mentioned by altering the definition in favour of the raiyat and making the grounds of enhancement workable in favour of the zamíndár; and if we have failed to facilitate in any marked degree the realisation of rent, it is because all the summary remedies proposed failed to yield just and satisfactory results. Having failed ourselves to do any more than is here set forth, we applied to the Judges, and the Council have seen their answer.

"As to the charge of having legislated for the raiyat without sufficient reason, you will have seen what has been said about the imperfection of the Act of 1859, from its passing to the present day, and attention had been directed afresh to this matter by the recent famines, and it was felt to be unjust to redress the complaints of the one side without taking into consideration the just demands of the other side. Besides, it became apparent that our best method of carrying out the often declared policy of the Government of protecting the cultivating classes, who form the bulk of the population, lay in extending the definition of the occupancy-right in such a way and to such an extent as to secure the fruition of that right to the great mass of the raiyats, who in my judgment ought to possess and enjoy it. Believing that with an advancing education nothing but trouble can befall us if our laws do not recognise what the agricultural population firmly believe to be their old and just right, that is, the right of occupancy, I have not hesitated to accept such amendment of law

as seemed necessary to that end. I will endeavour to describe briefly what we have done on this essential point. The whole revenue map of Bengal, speaking roughly, is divided into small village areas of different sizes and shapes called mauzás. Now, a resident raiyat had by the old custom a right of occupancy in the land in his own village, but in no other land. New villages sprang up, and even within the same village area arose detached clusters of homesteads, subsidiary villages or tolas came into existence, many of them near the boundary of the next village; and as the cohesion of the old village communities with their old organisation decayed, it became more common for the inhabitant of one village to become a permanent cultivator, though not a resident, of an adjoining village. It was thought right in 1859 to make permanence of cultivation and not residence the ground of the occupancy-right. I think this was only such a modification of the old law as might fairly be made to suit the altered conditions of the times, and so the rule laid down in 1859 was that whether a raiyat was a khudkhast raiyat or pykasht raiyat, yet having shown that he cultivated the same land for twelve years he should have a right of occupancy. The mistake was in providing that he should show that he had cultivated that particular piece of land for twelve years. The amendment that we have made is by providing that it should be enough that he is a permanent cultivator either in this or that village area, and that he should thereupon be considered to be an occupancy-raiyat of those village areas in which he is a permanent cultivator. Now this makes a great difference, as we get rid of the whole difficulty of proving that he cultivated a particular plot of land for twelve years. If he is a cultivating raiyat of one mauzá or village where he has his house and in two mauzás alongside, he should be held to be a settled raiyat of the whole three mauzás and have a right of occupancy in all of them.

“It must be abundantly known that a raiyat is not a man who goes about as a nomad, but is really attached to his own village; and so it follows in reason and common sense that he cannot cultivate except near his own village where his home is. If he takes up land he generally takes it up permanently. He may take it up for a temporary purpose, but ordinarily he takes it up either in his own mauzá or in the adjoining ones, and then no power can drive these men out of their own villages. The result is that this rule goes far to secure that the ordinary class of raiyats shall be entitled to the occupancy-right. We have made a further provision, Whereas the Act of 1859 said-‘you shall be an occupancy-raiyat of every piece of land which you have cultivated for twelve years,’ yet it has this exception, ‘provided that the landlord does not

1885.]

[*Mr. Evans.*]

prove a contract by which the raiyat took up the land on the condition of not being an occupancy-raiyat.' It is no doubt a strong thing to override a written contract, but it was thought that there was a tendency to insert this in every contract, and there is no doubt that it would be inserted to a very large extent; and therefore the Committee assented, though not without reluctance, to the insertion of a provision by which the raiyat is barred from contracting himself out of his occupancy-right. It was of very paramount importance to my mind that we should secure this right of occupancy to the raiyats, and not leave room for any device by which it might be defeated, bearing in mind that with illiterate and poor persons anxious to get land a provision of the kind might easily be slipped into a document. It was also apparent that both the zamíndárs and under-tenure-holders here are not people who desire the possession of land for cultivation, but they are simply rent-receivers. The only thing they desire is that the land shall be cultivated by the raiyats, and that they will pay as much rent as possible, and as regards the bulk of the zamíndárs of Bengal, there is not much hardship, because you are merely attaching a customary incident to the holding, and the only result is that the landlord is bound to enhance according to certain rules and not arbitrarily. Such a man cannot very much complain if we provide that the land shall be held under such circumstances that the right to enhance shall not be arbitrary but according to fixed rules. But there is another class of proprietors in respect of whom there really appears to be considerable hardship. These are persons who acquired land for the purpose of cultivating, at an expense beyond the power of the raiyat, certain valuable crops, such as tea and indigo. They have great ground to complain of these restrictions, namely, that it prevents them letting out temporarily to residents of the village any lands which they do not for that year wish to cultivate themselves. They say, very rightly, 'we want to let out the lands, which we wish to be cultivated for a year or two.' Take an ordinary case. The indigo plant derives its nourishment very far down in the ground, and it is a very exhausting crop. Rice, on the other hand, grows right on the top of the land, and does not exhaust the land except near the surface. An indigo-planter has in his hands a large tract of land, say, of 2,000 bíchás, on which he grew indigo last year. The raiyats, on the other hand, have another tract of land in their possession, and they come under the new Bill and say, 'let us have the land, which will give us an abundant crop of rice, and do you take our land for indigo for this year. We will pay you so much for your land, and we will give you back your land next year.' Under our legislation the zamíndár is obliged to say 'I must let the land to a person from

another village, because you will acquire occupancy-rights in this land; you are not competent to contract, and therefore, though a stranger offers me only half the rent, I must either let it to him or keep the land fallow or try and grow another crop of indigo, because the legislature has determined that you shall not contract yourself out of the right of occupancy. I should have to trust to your honesty, because the law will not recognise a contract entered into by you.' There is no doubt whatever of the very considerable hardship of this provision, and the only thing which will justify the doing of it is that the class it will affect is small. It is not very clear how landlords can protect themselves against this provision. Possibly they may do so by letting the land to a stranger or by getting the raiyats to exchange the lands which they cultivate, under some form of contract not amounting to a tenancy. But this, even if possible, would not meet all cases. I still hope that my hon'ble friend Mr. Ilbert may see his way to drafting some clauses which will give relief in these cases, while providing against abuse.

"The evil to be guarded against is that, if a raiyat is allowed to contract himself out of the occupancy-right, such a condition would, I fear, in time be found in every pattá, and thus the main object of protecting the occupancy-right would be defeated. The result of this legislation is that the bulk of the raiyats must be occupancy-raiyats; though new raiyats coming in from time to time would not become occupancy-raiyats until the expiration of twelve years.

"We have gone further and provided that when a raiyat is found cultivating as a raiyat, that is, paying rent for any piece of land, he shall in a suit by his landlord to whom he pays rent have the advantage of a presumption that he has been cultivating that piece of land for twelve years.

"The reasons for doing this are that the documentary evidence on this head is in the landlord's hands, and not in his, and that as a matter of fact most of the land is cultivated permanently, and the raiyat is often so poor and illiterate and so ill equipped to meet litigation, and so ill provided with money and reliable evidence, that it was feared that, without some provision of this kind, our efforts to secure him the enjoyment of the occupancy-right would not have the desired effect.

"This provision has been much complained of, but many of the strictures made on it are based on misconception. He does not by this clause get a general presumption that he is an occupancy-raiyat in consequence of his hold-

1885.]

[*Mr. Evans.*]

ing some undisclosed piece of land in the village or the estate. He gets the presumption only as against the landlord to whom he pays his rent, and who has the best evidence in his hands, and only as regards the particular land in dispute. This limitation, when duly borne in mind, disposes of many of the objections made against this presumption, though no doubt some remain in the case of the auction-purchaser, and will have to be discussed on the proposed amendments. But I think, in spite of them, it should be retained. As to the relief to the raiyat in cases when his occupancy-right is threatened to be disputed in Court, it is immense. The difference in all countries is great when the onus of proof is shifted on one side or the other. The person on whom the onus of proof lies has always to discharge a heavy burden. But if the onus of proof is so burdensome in all cases in countries where facts are more or less ascertainable, what must it be in this country, where everything brought before the Courts is too often illusory, where oral testimony evidence is so often worthless, and documentary evidence is frequently forged? I don't mean to say that the zamíndárs tamper with their documentary evidence, but it is quite certain that the gumáshtas and other inferior servants do it. This being the state of things, it makes an enormous difference on which side the burden of proof is thrown, and it may be said that it is easier for the zamíndár with his documentary evidence to prove that the particular piece of land has not been held by the raiyat for 12 years than for the raiyat to prove that it has been so held. I think that is going a long way in behalf of the raiyat, and I am astonished to find that my hon'ble friend Mr. Reynolds appears to think that we have not gone far enough, and that we ought to give him an occupancy-right in the estate, if he has held any land in any part of it for 12 years. I must point out the difference between a village and an estate, and the effect of introducing the word 'estate', which has been cut out by the majority of the Committee. The villagers are the villagers of a particular village, just as much as parishioners are parishioners of a particular parish; and the best illustration is to describe a village as a parish. Then the position is this. If a man is asked where he comes from, he at once says, 'I am so and so, the son of so and so, of a particular village'. On the other hand, an estate is an abstraction, a revenue-unit on which the Government revenue is paid, and which is liable to be sold up in default of payment of revenue. This unit is sometimes very large. It extends sometimes to 50 or 100 miles. Still the zamíndárs frequently sublet the estate in whole or in part, often in a number of perpetual tenures, generally known in Bengal as patnís. Each patnídár may again sublet in perpetuity by one or more under-patnís, and so on.

“Now, it is the lowest in gradation of the under-landholders who has to deal direct with the raiyat. He perhaps has in his tenure 10 villages out of 100 or 1,000 forming the estate, or he may have only one village. He can tell who are the raiyats of his villages. He has got power there and the means of knowledge, but with regard to the other villages in the estate he knows no more than I do. Why should the tenure-holders of other villages give him any information? Now, what is the result? When in good faith a small tenure-holder has let a little piece of land to a stranger, this stranger says ‘No doubt I said I will give up the land in a year or two, but I have a brother 20 miles away in the same estate; and although I am not even on the register of the landowner there, I enjoy it jointly with my brother, and under the cover of my brother I am a settled raiyat of the whole estate, and therefore I cannot cultivate any land in this large estate without acquiring the right of occupancy.’

“The particular landlord of this man knows nothing of the distant place, and cannot well ascertain whether the story is true or false. There is no warrant for this in the old customary law of the country, and I do not see any reason for doing that which it is so very difficult to justify. I am aware that this word ‘estate’ is in the Secretary of State’s despatch, and in the Bill as originally framed; but it is doubtful if the Secretary of State ever considered this particular point, or used the word in this sense. But whether he did or not matters little, for neither his despatch nor the Bill as first drafted contained the presumption, and it is very evident to me that my hon’ble friend cannot have both. It is going altogether too far.

“I hope I have satisfactorily shown that we have done a great deal for these occupancy-raiyats, and that we have strong reason for doing it. I have next to consider what we have done for the zamíndárs, because the allegation is that, while we have done a little for the raiyat, we have done nothing for the zamíndár. First of all, we have provided that the rise of prices shall be a ground of enhancement. It appears to me that that is in effect to fix the present rent in the staple grain of the country, so that the zamíndárs shall get the benefit of a rise in the value of the grain, with this proviso, that they shall not get the whole of the rise but only two-thirds, one-third being reserved to cover the increased cost of production, and that the rise should be a rise in the average price of over a period of ten years. It must be evident that this will be very beneficial to the zamíndár.

1885.

[*Mr. Evans.*]

First, we know that the value of money, as compared with the value of grain, has been falling; that 12 annas per maund was the price of rice at the time of the Permanent Settlement, and we see how enormously more silver it now takes to purchase a maund of rice. The result of this amendment is to establish a sort of self-acting scale by which the Courts, by performing a simple sum in arithmetic by reference to the Government price-list, would regulate the enhancement, and the zamíndár would be enormously benefited, and saved much of the present harassing and uncertain litigation. We know that in a great part of the country the rise in the price of cereals has been very great, but the provision in the Bill merely fixes the rent of the zamíndár, so far as the ground goes, at so many maunds of grain. At the present time no permanent fall of prices need be expected, as prices are steadily rising over decennial periods, though they are falling in certain years which only affect the average. No doubt the zamíndár may say, 'Why do you call this a ground of enhancement at all? It is merely adjusting the rent to meet the depreciation of money as compared with grain.' But it is something which he had not before, and which will give him steady enhancement, and, this being so, no word-splitting will alter the reality of this ground of enhancement, and most zamíndárs who wish to get on without harassing litigation will hail this as a substantial relief from the present position as regards the power of enhancing occupancy-raiyats. On the other hand, it has been said that this is a very sharp weapon to place in the hands of the zamíndárs, and that this enhancement ought to be treated as a great boon, and that, this boon being granted, the prevailing rate ought to be struck out. But this is simple justice to the zamíndár if you accept the Secretary of State's clear enunciation that the rents at present existing are to be considered fair, and not to be reduced except under special cases. The real meaning of the complaint is that it is believed that certain parts of Behar are rackrented already, and that any enhancement we legalise is an unmixed evil.

"If the districts of Behar are so rackrented, nothing you can do in the way of laying down general principles will help it. You must have special legislation to meet such cases. I therefore say that what we have done in respect of enhancement on the ground of rise in prices, while it is but justice to the zamíndár, greatly betters his position, and is a substantial amendment in his favour. Then we come to the question of the prevailing rate. It has been said that that provision should be struck out. I wish to point out that enhancement on the ground of the prevailing rate has existed in one form or another from the time of the Permanent Settlement. This ground of the prevailing rate

is a ground on which enhancement was allowed, and it was put in the Act of 1859, and it has been worked ever since. We have been strongly pressed by the Government of Bengal to drop the 'prevailing rate' as a ground of enhancement. And I observe that His Honour, in his official dissent, assumes, on the strength of the opinion given by various persons, that this ground is never worked except by fictitious rates. But though there are false cases started under every law that we have made, and fictitious evidence manufactured to meet the requirements of the law, yet, so far as I can learn, the majority of the cases on the prevailing rate contain no more perjury or fabrication than seems to be incidental to the bulk of litigation in this country. At any rate, the appeal pending in the High Court, in which the Government claim on the ground of 'prevailing rate,' enhancements from 100 to 400 per cent., has a strong bearing on this and the next point.

"As to this point, it would seem to show that the legal advisers of Government share my opinion that it is possible to prove an enhancement case on the ground of the prevailing rate without having recourse to fictitious rates or any demoralising process, for it cannot be supposed that any element of that character enters into a case which is in charge of that venerable body the Board of Revenue and the officials under its orders. Of all the grounds given in Act X of 1859, the ground of the prevailing rate has, I think, proved the most workable. I cannot share the apprehension of my hon'ble friend Mr. Reynolds that we have left the occupancy-raiyat defenceless in the matter of fair rent and liable to be forced up to a rackrent.

The 'prevailing rate,' which is even more necessary under this Bill than it was before to check the effects of fraud and favouritism of gumáshtas and others, cannot bring the rent higher than the present prevailing rates as increased in money expression by the fall in value of money as compared with grain. They seem therefore fair general rules for places not already rackrented. As to those places which are rackrented (if any), I have already expressed my opinion. I have thought it necessary to give reasons for the retention of the 'prevailing rate,' although there is no amendment proposing to strike it out, because the majority of the Committee differed upon the matter with the Government of Bengal, and it appeared necessary to me to justify the position taken up by the majority.

"Section 29, clause (a), I consider to be absolutely indefensible. Mr. Henessy's memorial has shown that a large proportion of his raiyats have

1885.]

[*Mr. Evans.*]

holdings under Rs. 5, and that the cost of registering contracts is prohibitive in such cases, but he has also drawn attention to the fact that in many places it is impossible to get the raiyats to give kabuliyats or take pattás. He instances the case in which the Commissioner of Bhagulpore, Mr. Alonzo Money, entirely failed to force the raiyats to do so on a ward estate. And it appears that Mr. Reilly, managing the Chanchal Estate under the Board of Revenue, has equally failed. We all know that it was made a universal rule under the Permanent Settlement regulations that the engagement as to rent should be in writing. We all know that it has been found impossible to enforce this, and that the rent engagements in many parts of the country are still oral, and that the only trustworthy evidence of what the raiyat has agreed to pay is to ascertain what he has actually paid. It would appear that the real effect of sections 28, 29 and 30 is to provide that those raiyats who have no written engagements and who traditionally refuse to sign anything can never be enhanced legally except by suit. What the effect of this will be in cases in which they have orally agreed to enhancements and have paid at enhanced rates for a year or more it is difficult to tell. This matter should be seen to, and some provision made for it. But apart from this I regard clause (a) of section 29, which protected the raiyat from agreeing to an enhancement of more than two annas in the rupee or $12\frac{1}{2}$ per cent. out of court as exceedingly mischievous, and likely to lead to lamentable consequences in many cases both to landlord and tenant. It is fatal to the raiyat in many cases.

“Take the Government case against a large body of raiyats in Malanagor, to which I have just referred. There the Government had a very heavy claim, from 100 to 400 per cent., against the raiyats, who number in all 600 or 700. It was certain that, unless the raiyats could establish fixity of rent, an enhancement of far more than $12\frac{1}{2}$ per cent. would be decreed, as they most undoubtedly held for a very long time at very low rates on condition of growing oats. Is it reasonable that, if a test case had been tried, or from some other reason, the raiyats came to the conclusion that it would be to their interest to accept a 25 per cent. or even 50 per cent. enhancement, they should be prohibited from doing so, and the landlord should be forced to drag them each one into Court, and obtain decrees for the full amount he was entitled to, with costs, stamp-fees, &c.? There are large numbers of raiyats holding at low rates on condition of cultivating indigo, and it is within my personal knowledge that, when it is proposed to discontinue indigo, they agree willingly to large enhancements of the rents, considering it beneficial to themselves to do so. Mr. Henessy states that he has let lands, the letting

value of which is one rupee, for eight annas on condition of the raiyats growing indigo. The raiyats would all be enhanceable on the ground of 'prevailing rate' when indigo is discontinued, and would probably consent to a 50 per cent. enhancement. Is it just to them to force them into Court with its heavy expenses? Is it just to the landlord to force him to undergo the expense ruinous to him unless he recoups himself by ruining the raiyat? It is not just, nor can I believe it is necessary. At the time of the Permanent Settlement it was thought right to leave everything to contract. We have found that freedom of contract must be limited in certain cases, just as in England it has been found necessary in the matter of hares and rabbits. But if there is one thing which the raiyat thoroughly understands and is specially heedful about, it is the *narikh* or rate per bighá which he is to pay. This is the one subject which he thoroughly understands, and which he is most deeply interested in. It is most difficult to get him to consent to an enhancement unless he is satisfied he cannot resist. It is by watching test cases and the fate of his neighbours' litigation he satisfies himself that it is more to his interest to agree with his adversary than go to law. It is a cruel mercy to him to insist against his better judgment that he shall be ruined by litigation. If the raiyat is not given power to contract in these cases, it is difficult to know in what cases he ought to have the power. I do not think that 100 years of British rule has left the raiyat in so much less intelligent a condition than he was when we came, as to call for any such provision. I know well it is intended to protect him in contracting with one more powerful, but in this case I think this protection is illusory and the mischief very real.

"As regards the motion before us and the question of re-publication, I will only say that I regard the kernel of the Bill as sound, and the general object and scope of it as salutary, and that it should be proceeded with and necessary amendments made in Council. The recent modifications have been in the direction of meeting just objections of the zamíndárs, and I am not aware that any new matter has been introduced into it which would call for re-publication. In considering the desirability of future delay the possibility of agitation among the raiyats should not be lost sight of.

"The hour is late, and I will reserve the remarks I have to make on various other sections for the Motions to amend those sections, which are very numerous."

The Council adjourned to Monday, the 2nd March, 1885.

R. J. CROSTHWAITTE,

FORT WILLIAM;
The 13th March, 1885.

} Offg. Secretary to the Government of India,
Legislative Department.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Monday, the 2nd March, 1885.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B.,
G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble T. M. Gibbon, C.I.E.

The Hon'ble R. Miller.

The Hon'ble Amír Ali.

The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.

The Hon'ble H. J. Reynolds.

The Hon'ble Rao Sahab Vishvanath Narayan Mandlik, C.S.I.

The Hon'ble Peári Mohan Mukerji.

The Hon'ble H. St. A. Goodrich.

The Hon'ble G. H. P. Evans.

The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Durbhunga.

The Hon'ble J. W. Quinton.

BENGAL TENANCY BILL.

The adjourned debate on the Hon'ble SIR STEUART BAYLEY'S Motion that the Reports of Select Committee on the Bill be taken into consideration was resumed this day.

The Hon'ble MR. GOODRICH said :—“ It is right that I should, however briefly, express my opinion on the two questions to which each member of the Council must presently reply in the affirmative or negative.

“ In the first place, the necessity of immediate regulation by law of the relations between landlord and tenant seems proved. In the second place, the Bill in

question will limit the landlord's rights no further than the public interest demands.

“ My assent to the second proposition is, like the adhesion to the report of most of the members of the Select Committee, given subject to some reservations which I will briefly indicate.

“ In the first place, the public interests will suffer if an improving landlord be not permitted to bar for a term of 30 years his tenants on land which he has reclaimed from beginning to acquire occupancy-rights therein. Mr. Hunter's amendment will meet this case, and will increase the chance of capital being applied to land.

“ Under this Bill the enhancement of rent seems not permissible, on the ground that land let to a raiyat as *rural* land may have become *suburban* by the rise of a centre of commerce or industry, such as a new railway-junction, port, coal-mine or factory. Such cases will arise, and the landlord ought to be able to enhance on lands which, when let, were far from any market, but which have acquired a fancy value as accommodation-land by proximity to a new centre of population.

“ The partial denial of the tenant's competency to contract must affect interests in various ways, not all perhaps now foreseen; but a practical consequence of the denial of the right to agree to an enhancement of more than two annas, excepting by suit, will be the infliction of the costs of a great mass of litigation upon the raiyats. I speak as one who has been Settlement-officer or Collector for the last 14 years, and can assure the Council that if the condition of the estate of zamíndárs resembles that of Government estates and of zamíndári estates in the Northern Districts of Madras, enquiry, such as Government, when landlord, everywhere asserts its right to conduct, will bring to light instances of lands fraudulently under-rated in almost every village.

“ These questions will no doubt be fully discussed when the amendments to section 30 of the Bill are under consideration.

“ I do not see any complaint from landlords on the score of the want of provisions empowering them to expropriate on terms assessed by a pancháyat occupancy-raiyats holding lands which the landlord needs for the execution of improvements, or for the erection of buildings or extension of premises which may be needed for the industrial development of his estate, or for neces-

1885.]

[Mr. Goodrich ; Bábú P. M. Mukerji.]

sary use in the working of mines or quarries. I think a prudent landlord would desire to possess this power. The State where it is landlord enjoys it, and it is for the public interest that it should be given to the landlord under due safeguard. Whether the landlord should be allowed to do as the State is doing, and take up land needed for fuel and timber reserves, paying of course compensation to evicted tenants, is a somewhat larger question; if it has been raised in the course of the Committee's enquiry, I have missed it.

“Permit me, my Lord, to add that the value of the patient and well-directed labours of the Committee have been fully recognized in *Southern India*.”

The Hon'ble BĀBŪ PEĀRĪ MOHAN MUKERJĪ said :—“After the very gratifying testimony which the hon'ble member in charge of the Bill has borne to the value of my humble labours in the Select Committee, it would be ungracious in me to view with indifference the impatience expressed by the hon'ble member in the concluding part of his speech with any proposal for a postponement of the immediate passing of the Bill. But I should be lacking in the duty which I owe as a responsible member of Your Lordship's Legislative Council, and the duty which I owe to my countrymen, if I hesitated to beg Your Excellency and this hon'ble Council to pause before taking up the amended Bill for consideration for the purpose of passing it. Reserving to myself therefore the right of making a substantive motion on the subject, if necessary, I submit in the interests of all concerned that the amended Tenancy Bill should not be taken up for consideration by this hon'ble Council on the present motion of the hon'ble member in charge of the Bill. It is necessary to allow sufficient time to hon'ble members for studying the Bill, and the voluminous literature on the subject, before the Council might be expected to give to a discussion of its different provisions that intelligent consideration which its importance deserves, and also sufficient time to the public and to the parties interested for submitting their views and criticisms on the measure. The Bill has undergone considerable modifications since the Preliminary Report of the Select Committee was submitted last year; so many as 45 sections have been expunged, 13 new sections have been added, 21 sections have been thoroughly re-cast, and large modifications, both verbal and material, have been made in a number of other sections. The changes made in the Bill affect questions of paramount importance, and it cannot be expected that hon'ble members have been able in barely a fortnight's time to master the details of the revised Bill, and to judge of the justice and expediency of the various additions, omissions and modifications, considered by themselves and with reference to their bear-

ings on the general scheme of legislation. This fact must have forcibly pressed itself upon Your Lordship's attention at the last sitting of the Council, when an hon'ble member, himself an eminent lawyer and the ornament of his profession, entertained serious doubts as to the correct meaning of the provision about enhancements of rent by registered contract, and put upon it a meaning contrary to that given to it by the hon'ble member in charge of the Bill. The time usually given to the gestation and maturation of important legislative measures is never thrown away. Considering that a much less important measure, the Transfer of Property Act, was before this hon'ble Council for full five years before it was passed in 1882, that there are even now three Bills, one to amend the law relating to Court-fees, the other to amend the law relating to Civil Courts, and the third to declare the extent of testamentary powers of Hindus and Bhuddists, which have been before the Council since 1881, I feel confident that hon'ble members will not grudge the time required to bring to a satisfactory termination a measure which immeasurably exceeds in importance any of these other measures, and which will, for weal or for woe, affect the destinies of more than 50 millions of the people of these provinces. The necessity of giving hon'ble members and the public further time for the consideration of the revised Bill is the greater as it proceeds on lines very different to those on which the Bill was modified and presented to the public last year; and nothing shows this more clearly than the Report of the Select Committee and the Dissents recorded by a large majority of the hon'ble members who sat on that Committee. Exception has been taken to the revised Bill on the ground that the rights it confers on non-occupancy-raiyats would practically convert them into occupancy-raiyats, that the restrictions it imposes on enhancement of rent would virtually make enhancement of rent more visionary than real, and that the power it gives the Local Government to order wholesale reductions of rent on grounds other than those mentioned in the Bill was opposed to the assurance given by Government when the Bill was introduced in Council that the *status quo* was not to be disturbed; while, on the other hand, it has been alleged that the Select Committee have omitted or materially modified several provisions which formed the keystone of the original scheme, and that the present outcome is scarcely a settlement of the many important questions relating to the law of landlord and tenant. In the face of such radical alterations in the Bill, it is due to those whose interests would be so greatly affected by the measure that they should be allowed an opportunity of examining the Bill in its present form, and of submitting to your Excellency in Council their views regarding it. It is for the observance of no technical form of procedure that I presume to make this proposal. The re-

1885.]

[*Bábd P. M. Mukerji.*]

commendation made by the Select Committee, that the revised Bill should not be re-published—a recommendation, by the way, which is wholly incompatible with the Report itself—amounts to a virtual denial to the people of a privilege which they have enjoyed since 1862—the privilege, namely, of being allowed an opportunity of submitting to Government their views and wishes regarding a legislative measure which vitally affects their interests. The question engaged the attention of Your Lordship's illustrious predecessor, and His Lordship, in communicating his views to the Government of Bengal through the Secretary in the Legislative Department, observed: 'He (the Governor General) is, on the contrary, fully sensible that it is the duty of the Government to give the largest practicable amount of publicity to legislative proceedings, and to afford the public every opportunity of examining them and expressing an opinion upon them, and he is satisfied that more can be done in this respect than is done at present.' But only a very limited publicity will have been given to it if the revised Bill be not translated in the different vernacular languages and published in the local Gazettes. Although the present measure is unquestionably the most important scheme of legislation that has come before this hon'ble Council since its establishment, a vast majority of the landholders and the whole body of raiyats will have no opportunity given them of examining the provisions of the revised Bill and offering their opinions upon them. In the face of the provisions contained in Bill No. II, the changes made in the sections regarding tenures and registration of transfers of tenures, the new limitations imposed upon enhancement of rent in Court and out of Court, the additional protection given to subletting, the power given to the Local Government to order a reduction of existing rents in certain cases on grounds other than those recognised by law, the new section regarding contracts and a number of other provisions would come as a surprise upon most landholders if the Bill be not re-published; while the raiyats would discover with disappointment that the long-promised provisions for attaching to land a legal status independent of the length of possession of the holder, for a free sale and mortgage of occupancy-holdings and for village tables-of-rates defining the maximum limits beyond which there could be no enhancement of rent, find no place therein. Your Lordship is well aware that the progress of the Bill is watched with the greatest anxiety and interest by all classes connected with the land in these provinces. Memorials adopted in crowded meetings of raiyats have poured in from different parts of the country, expressing their greatest consternation at the provisions for survey and record-of-rights and other sections of the Bill. They have even made bold to submit that, although actuated by the best intentions, the legislature, in its ignorance of their actual condition

and relations with their landlords, will cause their ruin by the measure which it purposes to give them. Petitions have likewise poured in from landholders assembled at meetings in different parts of these provinces, submitting that there is no necessity whatever for substantive changes in the law on the lines on which the Bill has been drafted, that the Bill makes inroads upon vested rights of property guaranteed by law, and respected by preceding Administrations for nearly a century, that most of them have come to the possession of estates by purchase for large and valuable considerations, and that the proposed measure would, therefore, impose upon them, to use the words of John Stuart Mill, 'a penalty for having worked harder and saved more than their neighbours.' The landholders have repeatedly implored Your Lordship and Your Lordship's illustrious predecessor, with a persistency which has its apology only in the strength and sincerity of their convictions, to satisfy yourselves by the strictest enquiry that they have used with the greatest moderation their powers of eviction and settlement of rent, and that the condition of the raiyats in these provinces is one of growing prosperity. They have gone farther. At a meeting held at the Town Hall on the 29th of December, 1883, perhaps the largest, certainly the most influential, ever held in this city, they unanimously carried a resolution which I shall read to your Lordship: 'That if the deprivation of the landholders of their just rights, inherited from generation to generation, confirmed by the Permanent Settlement, and consecrated by a century of British rule, be deemed essential to the welfare of the tenantry, the Government be solicited to consider the justice of allowing the zamíndárs to surrender their estates on receiving such compensation in money as will, when invested in Government securities, produce a permanent return equal to their present income.' In compliance with that resolution they submitted a memorial to the Government of India. Could anything indicate more strongly their sense of the injustice involved in the measure and their feelings towards it? Your Lordship will be pleased to see that the landholders of Bengal and Behar, numbering among them those whose manorial possessions date from days long anterior to the date of the Muhammadan conquest, have come forward in a body with a memorial declaring their readiness to forego the allurements of their position and social consideration, and to forego all hopes of future profit, and praying the Government of India to be allowed to surrender their estates in return for such security in money which would bring them their present income. It is not, however, the parties interested in the measure who alone consider the proposed changes in the present land law wholly unnecessary and altogether unsuited to the country. The hon'ble the Chief Justice of Bengal has, with the authority due to his eminent position, declared that he sees no 'such necessity as

1885.]

[*Bábú P. M. Mukerji.*]

justifies the Government of Bengal in depriving the landlords of Bengal of their rights and privileges in the manner proposed by the new Rent Bill.' And, again:—'It seems to me inconsistent with the good faith of the British nation, which the Native community have hitherto had reason to respect, to deprive the zamíndárs of the rights and position which they have acquired under the Permanent Settlement.' No less defined is the opinion of the hon'ble Justice Field, who by his masterly Digest of the Rent Law, the prominent part he took in the labours of the Rent Commission, and the pre-Raphaelite minuteness with which he has delineated the land systems of different countries in his admirable work, has established a claim to speak with the highest authority on the subject. He says:—'I think we ought not to interfere with existing rights which have been the creation of our own administration operating upon the natural progress of the country. I think that no case has been made out for disturbing the landmarks of property. It must be borne in mind, as I have more than once pointed out, that a large proportion of the present proprietors are *boná fide* purchasers for valuable consideration, men who have paid their money for property sold at revenue sales, and in execution of the decrees of the Civil Courts, upon the faith of the existing state of things and the rights created by our laws and by our own action or inaction.' Other high officers of State have also denied the necessity of the measure now before this hon'ble Council. When the very necessity of the measure is denied by trusted and responsible officers of Government, the desirability of re-publishing the Bill with a view of giving the public and the parties interested an opportunity of examining the material modifications made in it by the Select Committee becomes imperative. The only argument that has been advanced by the Government of Bengal and by the hon'ble Member in charge of the Bill in favour of hurrying it forward through the Council is one based on the desirability of setting at rest the unsettled condition of the public mind on this question, and of preventing the further growth of expectations in the minds of raiyats which are not destined to be realised. But where is the urgency of passing a measure which, to use His Honour the Lieutenant-Governor's own words contained in his dissent, 'inadequately meets the necessities of the case which called for legislation,' and which is scarcely 'a final settlement of the many important principles connected with a Tenancy Bill in the Lower Provinces of Bengal.' The cause of this unsatisfactory termination of the labours of the Select Committee is not far to seek. Government have undertaken to make extensive amendments in the land laws of the country without having at their disposal facts and figures which alone could have shown whether they are necessary. I cannot more graphically describe the ignorance which prevails on the subject

than in His Honour's own words. Speaking from his presidential chair at a meeting of the Bengal Council on the necessity of a patwarí law, His Honour is reported to have said:—'The object of the Bill is to get at the facts connected with the agricultural economy of the country. For the last ninety years we have been endeavouring without any success to arrive at these facts. Everybody complains; those who have been discussing the Rent Bill for the last six or seven years complain; gentlemen who come to India to make enquiries about it complain; the zamíndárs themselves, and the raiyats, if they could speak, also admit that neither the Government nor the zamíndár nor the raiyats have any positive knowledge of the facts which exist in regard to their relations to one another as regards their own property.' The argument based on what are called the necessities of the case falls, therefore, to the ground. Is then the present law so very defective as to call for immediate action on the part of this hon'ble Council, notwithstanding the numerous modifications made by the Select Committee? I shall answer the question by reading to Your Lordship a statement from the despatch of the Government of India to Her Majesty's Secretary of State: 'A great part of the evils we describe,' they said, 'is unquestionably due to defects in administration rather than to defects in the law.' I lay the greatest stress on this statement as one which conclusively shows that there is no necessity whatever for passing the amended Bill without giving it due publicity beforehand.

"I would beg Your Lordship to view the question in another light. The Bill, as amended by the Select Committee, differs widely from the scheme of legislation submitted to Her Majesty's Secretary of State for India by the Government of India, and from the scheme which received the sanction of His Lordship. The scheme of the Government of India was summarised in 13 proposals mentioned in paragraph 108 of their despatch, which, with Your Lordship's permission, I shall examine shortly *seriatim*. The first was—'To restore the great body of the raiyats of Bengal to the position which they held under the ancient land law and custom of the country.' But, far from giving the raiyats the benefits of the ancient land laws, the Bill contemplates the repeal of the very sections of Regulation VIII of 1793 which define the relative rights of landholders and raiyats under the Permanent Settlement, and as regards customs no attempt whatever has been made to ascertain their nature and scope, or to formulate them into statutory provisions. The second proposal was—'To effect this restoration by declaring that the occupancy-right, carrying with it the privilege of a legal rent, shall attach to all raiyati land, and shall be enjoyed

1885.]

[*Bábú P. M. Mukerji.*]

by all settled raiyats, nomad raiyats and under-raiyats being excluded.' The section of the Bill which contained this provision has been expunged, evidently in deference to the opinion of Her Majesty's Secretary of State. The third proposal was—'To accept the proposals of the Lieutenant-Governor for the re-establishment, rectification and enforcement of the parganá rates, subject to certain modifications, of which the chief relate to the framing of principles of assessment, to the securing the benefit of improvements to those who make them, to avoiding class restrictions in respect to the enhancement of rent, and to permitting applications in certain cases for a complete settlement of estates.' The Bill contains no provision whatever for the re-establishment of parganá rates, and the provisions permitting application for settlement of estates form part of the chapter on survey and record-of-rights. The 4th proposal was 'To empower the Local Government to maintain the Collector's tables of rates for periods extending from 10 to 30 years.' The provisions embodying this proposal have been expunged from the Bill. The 5th proposal was—'To declare that no contract shall debar a raiyat from acquiring a right of occupancy in raiyati land.' But, instead of restricting freedom of contract in one particular, the Bill provides for such restrictions in 13 different particulars. The 6th proposal was—'To render the occupancy-right transferable, not, indeed, by summary sale without decree, but by sale in execution of decree and by private sale.' This has been abandoned, and the matter left to custom as at present. The 7th proposal was—'Except as above, to impose no restriction on the mortgage of the right.' This also has been abandoned. The 8th proposal was—'To secure to occupancy and other raiyats due compensation for their improvements.' This I find is the first proposal to which due effect has been given in the Bill. The 9th proposal was—'To reserve to the Government the fullest power of interposition to prevent the growth of a pauperised cottier class.' This refers to the evils which might be brought about by the transfer of raiyati holdings by sale or mortgage to landjobbers or moneylenders, and is therefore a mere corollary of the proposal regarding transfer of occupancy-holdings which has been abandoned. The 10th proposal was—'To discourage subletting by certain expedients, of which the most important is a limitation of the amount of rent recoverable from under-raiyats.' The provisions of the amended Bill, on the contrary, would encourage subletting and give great protection to sub-lessees. The 11th proposal was 'To provide for the more speedy realization of arrears of rent, when the rates are undisputed, by a modified method of distraint and an abbreviated procedure, as recommended by the Lieutenant-Governor of Bengal.' No summary procedure whatever for the speedy realization of rent has been given, and the institution of distraint

has been virtually abolished. Instead of giving facilities for the recovery of rent, the Bill will immensely add to the difficulties of the landholders in this respect. It provides for meddling with the simplest transactions between the landlord and tenant, and makes a reference to the Courts and Revenue-officers obligatory for the ultimate regulation of every bargain relating to land; and whereas the present law provides for the aid of executive officers for only a single purpose, namely, measurement of land, there are more than 50 sections in the amended Bill which provide for executive interference on the part either of the Local Government or of their Revenue-officers. The inevitable effect of such provisions would be to annihilate the landholder's prestige in his estate, and thereby throw insuperable obstacles in the way of his recovering his rents. I shall read to Your Lordship in this connection the statements made before the Parliamentary Committee in 1832 by one who has denounced the wisdom of the Permanent Settlement in no measured terms—I mean James Mill. He says—‘To draw from the raiyats the duties or contributions which they owe is well known to be a business of great detail and difficulty, requiring the strictest vigilance and most minute and persevering applications. Anything which strikes at the credit of the zamíndár, farmer or other functionary by which this duty is performed immediately increases the difficulty by encouraging the raiyat in the hope of defeating the demand by evasions, cunning, obstinacy or delay.’ The 12th proposal was ‘To authorise remissions or suspensions of rent where there has been a remission or suspension of land-revenue.’ The Bill contains no such provision. The 13th and last proposal was ‘To take up the question of introducing throughout Bengal the system of village records and field surveys, commencing with the Patna Division.’ And this is the second out of 13 proposals which has been fully embodied in the amended Bill, although it was one the difficulties attending the carrying out of which were clearly pointed out by Her Majesty's Secretary of State. The amended Bill, therefore, is in many important particulars at variance with the proposals which, with modifications in only one material point, received the sanction of Her Majesty's Secretary of State. Whether under such circumstances Your Lordship would consider it desirable to submit the amended Bill for the consideration of Her Majesty's Secretary of State for India is a question which it is for Your Lordship alone to decide, but I beg leave to submit that that question acquires additional importance from the fact that the landholders of Bengal and Behar took express exception to the correctness of the statements of fact and law contained in the despatch of the Government of India on which the sanction of Her Majesty's Secretary of State to the introduction of the Bill in Council was based. That despatch assumed that ‘the right of Government to fix at its own dis-

1885.]

[Bábú P. M. Mukerji.]

creation the amounts of the rents upon the lands of the zamíndárs had never been denied or disputed,' whereas such a right is not only disputed, but it was distinctly disproved by the researches of Sir John Shore and disclaimed by the authors of the Permanent Settlement. The despatch declared that the rights of raiyats were not ascertained and defined at the time of the Permanent Settlement, whereas it is well known that those rights formed the subject of a searching enquiry for 20 years before the settlement was made, and that they were clearly defined in Regulation VIII of 1793. It gave extracts from the evidence of Holt Mackenzie before the Parliamentary Committee of 1832, showing the desirability of legislation on the subject of tenant-rights, but it ignored the important statement made by him that 'if done without their (zamíndárs') consent, we must, I apprehend, interfere by a new law, and be prepared to give the zamíndárs compensation or allow a reduction of revenue.' It declared that before 1859 the zamíndárs had no right to enhance rents, on the grounds of rise in price of produce, and that the institution of distraint was an offshoot of the Regulations—statements which require no formal refutation. These and other statements formed the subject of a memorial, dated the 17th of November, 1883, by the landholders of Bengal and Behar to Her Majesty's Secretary of State; and His Lordship was pleased to observe, with reference thereto, that he 'can find nothing therein which would justify his assenting to its prayer that further legislative proceedings in connexion with the Bill should be stayed in order to enable him to re-consider the principles on which the Bill has been framed.' His Lordship adds that 'the most careful attention be given to the arguments of the memorialists when he receives *the Bill as finally settled.*' Your Lordship is well aware that as soon as a Bill has been passed by this hon'ble Council and has received the assent of Your Lordship, it ceases to be a Bill, and becomes, to use the language of the Indian Councils' Act, 'a Law or Regulation' notwithstanding the power of disallowance vested in Her Majesty's Secretary of State. The concluding portion, therefore, of His Lordship's remarks has raised a hope in the minds of the landholders that, before the Bill is taken up by this hon'ble Council for the purpose of passing, it would be sent to Her Majesty's Secretary of State for his consideration. Whatever foundation there might be for such a hope, I earnestly entreat Your Lordship and this Honourable Council to order a republication of the Bill, before it is taken up for consideration, and that Your Lordship will not press forward, without further and due publicity, a measure which is at utter variance with the scheme which was sent up to Her Majesty's Secretary of State and with the instructions contained in the despatch of the Secretary of State, which the landholders look upon as a measure which in the absence of any

[*Bábú P. M. Mukerji; Rao Şaheb V. N. Mandlik.*] [2ND MARCH,

necessity makes serious inroads upon vested rights of property, which the raiyats themselves regard with great consternation, and which landholders and raiyats alike, and not a few of the responsible officers of State, regard as a measure possessing a much greater claim than any other measure that could be devised to the title of 'A Bill for the promotion of litigation in Bengal and Behar.'"

The Hon'ble RAO SAHEB VISHVANATHA NARAYAN MANDLIK said:—
 "My Lord, in this matter I propose to follow a moderate course, as I think it will be the best under the circumstances; for this I have my reasons, which I now propose to give. The Bill, together with the Select Committee's Report, as well as the dissents, have now been before us for two weeks, and a comparative study thereof, along with the Bill in its previous stages, has been a task of very great difficulty to me. The cause of this may be partly seen from the review that has been just submitted by the Hon'ble Sir Steuart Bayley. The hon'ble members who have followed him have had, with one exception, the advantage of being on the Select Committee for more than a year. If my remarks appear, therefore, somewhat cursory and disconnected, that circumstance arises from the necessities of the case. The mass of district papers, unindexed, has to be looked into each time from a differently placed standpoint. This is, however, not my only difficulty. Questions of principle have been introduced into the discussion in the Committee, and by different members of the Committee in their dissents; and they also arise in the papers circulated to the members of this Council and in the speeches of my hon'ble colleagues who have preceded me. In justice, therefore to myself, and to the Government of India, whom I am bound to help with such little light as I may be able to throw on the subject, and to their officers, who have worked hard to give their opinions as well as a variety of information about their respective districts, I must dwell for a few moments on the whole matter now before us.

"The legislature of India can only follow a safe and sound course. The question now before us directly affects 58 out of 217, or more than a fourth, of the revenue or judicial districts of British India, and indirectly about twice as many more. The Permanent Settlement is not in question now, and cannot be. I know, my Lord, I am here treading on delicate ground. But I have my views on the subject, and the Government of India has now finally approved of the principle. The Permanent Settlement is the sheet-anchor of the Government and the people, and we hope that when all the conditions are fulfilled (be it two, or be it three, conditions), it will be introduced in its own time throughout the empire as the best political and economical measure that can be devised. Neither party to this present contest refer to it, except as

1885.]

[*Rao Saheb V. N. Mandlik.*]

a means of getting rid of their own difficulties. I allude to it now, because it has been introduced into the discussions both here and outside, and because these discussions have caused unrest for which I see no sufficient cause and which ought not to be lightly indulged in.

“The brief history of the present Bill may be thus given. In 1859 the Occupancy Act was passed, recognising heritable but untransferable occupancy-right under certain circumstances. This was repealed in 1869 by a Bengal Council Act. Still the rent difficulty was not overcome. Zamíndárs could not recover rents. This was admitted by the Government of Bengal and by the Government of India in 1877-78. How is this got over? This is what the Divisional Commissioners say. The Commissioner for the Presidency Division says the zamíndárs had ‘a good right to expect a very much more substantial relief’ in regard to the recovery of rents. He holds that the Bill, if passed into law, is not likely to end in a satisfactory solution of the questions at issue. The Burdwan Commissioner is opposed in a manner more pronounced; so are those of Dacca and Chittagong; the latter would urge the non-extension of the measure to his district. The Commissioner of the Rajshahye Division is altogether opposed to the Bill, and thinks that while the raiyats of Bengal have been the stronger, and the Lieutenant-Governor in 1877 thought that a Bill for the proper recovery of rents was required, something else which was not then considered necessary has taken the place of the Rent Bill. He shows that rent-suits have increased by the grant of occupancy-rights, presumably to improvident people. This he shows by extracts from the report of the Deputy Commissioner of Darjeeling, formerly District Judge, &c., in the Sonthal Parganás.^a

^a Mr. Oldham estimates that about 80 per cent. of the civil suits in the Sonthal Parganás are instituted by money-lenders to recover advances made to raiyats, a large majority of whom have occupancy-rights, and the following figures for the year 1883 compare litigation in the three districts, just mentioned:—

District.	Population.	Number of civil suits instituted.	Number of civil executions of decrees instituted.
Sonthal Parganás	1,568,093	7,351	4,253
Dinagepore	1,514,346 *	5,188	2,518
Rajshahye	1,338,638	2,674	1,930

Further on, he observes—

“I have no figures showing the number of civil suits in the Sonthal Parganás before such provisions as those in the Bill were introduced, but Mr. Oldham’s statement that they greatly increase litigation seems sufficient.

‘Lastly, Messrs. Livesay, Newbery, Ruddock, Dalton and Tute, and I would point to the following figures for 1883 as showing that litigation for the recovery of rent has not been decreased by the provisions of the Bill, though Mr. Oldham here again thinks that without transferability there would not be nearly so many rent-suits, as fewer money-lenders who quarrel with the zamíndárs would become occupancy-raiyats:—

District.	Number of rent-suits instituted.	Number of rent executions instituted.
Sonthal Parganás	3,892	2,805
Dinagepore	3,902	1,620
Rajshahye	1,978	853”

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“Again, the Board of Revenue consider that the rents are lower than what they were in the beginning of the last century. And this would rather indicate that we must look chiefly to a good rent-recovery law, abolition of illegal levies, and the partition of all partible properties for our help.

“In face of these facts, it is hard to say that the present Bill does provide additional facilities for the recovery of rents on which the payment of the *jamá* depends, and which was asked for and promised. After having studied the matter, I must say that to me the natural solution of rent difficulties appears to be the amendment of Act X of 1859 and not its repeal. We ought to have had complete statistics placed before us. I do not now advocate taking additional evidence. The reasons for this will be seen from my subsequent remarks. I know the Government of Bengal complain (letter dated 27th September, 1883) ‘it is a misfortune that Bengal is so absolutely destitute of a record-of-rights.’ And the hope is there expressed that when such record is established disputes will be impossible.’ I regret I cannot join in the expression of the latter hope. Disputes do not depend on the mere character of public records. Their causes are deeper and varied, and I may say that the greater the complexity of legislation, the pressure of population on the means of subsistence, and, in some measure, the advance of modern civilisation itself, the larger will be the quantity of litigation. Historical experience completely supports me in this position. But my present complaint is of a more practical character, and relates to matters like eviction, distraint and others which we shall soon have to consider when going into detail. And the complaint is based upon the existence of the present law beginning from Regulation VIII of 1800 and coming up to Bengal Act VII of 1876. These laws were passed for securing some such statistics; and we ought to have *máuzawár* or village registers, and *parganáwár* or district registers, prepared under them. They would have given a large quantity of information about all the lands in each district, their situations, dimensions, holders and other particulars. From these, valuable information about the state of the people could have been gathered. I extract a specimen from the papers handed up, by the Commissioner of the Patna Division, which show that within the last 80 years in the Gya district each estate has been split up into six and even more portions, and the number of proprietors has increased from 18 to 24-fold.^b

^b Extract from enclosure of Commissioner's Report No. 484 R., dated 7th July, 1883, page 11 (note).

“In the 24 Parganáas, which are now comprised in the district of Gya, the total number of estates in 1789 was 744, and the number of proprietors 1,160; in 1871 the number of estates was 4,411 and the number of registered proprietors 20,453. In 80 years, therefore, each estate has, on an average, been split up into six, and,

1885.]

[*Rao Saheb V. N. Mandlik.*]

“This is one example in regard to the case of the proprietors as the one I gave before is in regard to occupancy-tenants. As a very considerable number of these are said to exist in Bengal, such information would have cleared up many difficulties in regard to recovery of rent and other matters. None of the dissents, so far as I can see, supplies any help in this direction. All zamíndárs could supply statistics, and ought, I think, to have been called upon to do so.

“Turning, therefore, necessarily to the divisional reports, the state of matters is not quite reassuring. Some officers would rather work the present law more strictly and stop the illegal ábwábs. Others think the new law not at all necessary, and have proposed a provision empowering the Local Government to introduce it into any locality at its discretion.

“As far as I have been able to gather, the Commissioners oppose the Bill, first, as unnecessary, and as going beyond the necessities of the case; and secondly, because it will not produce the results anticipated, but will injure vast interests without any compensating public good, and end in injurious litigation to the detriment of all parties. Some Collectors would have a moderate Bill. Such being the state of matters, I am sorry I am not able to follow the line taken up by those hon’ble colleagues who complain of the present Bill as not conceding all they claim for the tenants. The evidence of the District Officers is quite the other way, and I think it should not be set aside except on very strong grounds sufficient to override their weighty representations. His Honour the Lieutenant-Governor has a fourfold complaint against the Bill. The Hon’ble Mr. Reynolds thinks that, if anything, this is a law which cannot last long. The Hon’ble Mr. Amír Alí is also dissatisfied for the non-extension of occupancy-rights to classes who the district authorities think are not generally entitled to them; while the Hon’ble Mr. Gibbon thinks that complete transferability ought to have been enacted instead of its being left to Courts and custom. Again, I see a demand made in some quarters for what is

where there was formerly one proprietor, there are now 18 (Statistical Reporter, Volume XII, page 126). In 1790, there were 1,232 separate estates on the rent-roll of the Patna district, as then constituted, held by 1,280 registered proprietors. Including a net total of 777 new estates obtained by transfer from the Gya district, the number of estates on the rent-roll of the district amounted in 1870-71 to 6,075. The number of registered proprietors had increased to 37,800. Allowing for the increase in the size of the district by the addition of the Behar sub-division, the number of estates under the Patna collectorate had quadrupled since the original assessment in 1790; and where there was formerly one proprietor, there are now probably 20 (Statistical Reporter, Volume XI, page 187). In the district of Tirhoot the figures are more marked. In 1790 there were 1,321 estates held by 1,99 registered proprietors. In 1871 the number of estates was 11,500 and the number of registered proprietors 73,416 (Statistical Reporter, Volume XIII, page 168). So long ago as 1789 Mr. Shore remarked on the insignificant size of the Behar estates and the poverty of their owners. If subdivision has gone on thus rapidly, with estates, it is hard to expect a different state of things in case of transferable occupancy-holdings.”

called spirited legislation. To persons who ask for such legislation I again refer to the valuable reports of our district authorities. These are entirely opposed to such a course. Indeed, it seems to me that those who advocate such a course are hardly aware of the gravity of the occasion or the seriousness of results. Social and economic changes, to be stable, must be slow, and must come from within. Does the evidence before us warrant such a proceeding? I am bound to say no. I would rather that the energy wasted on such attempts at seeking spirited legislation were more usefully employed in training cultivators, say, over given areas, to be more hard-working, self-reliant, truthful, God-fearing men. Their example would be more efficacious than a cart-load of invectives against vested interest of any kind, and will certainly produce a moral revolution which the Government above all others would be the first to recognize.

“The Government of India, in the Irrigation papers published in October, 1871, lay down a well-known caution in regard to the evils produced by periodic settlements. The principles which underlie those observations (*vide* Minute of Lord Mayo and other papers) appear to be that frequent interference in the private affairs of the people must produce evil. Here, on the contrary, the call upon the Government seems to be not to desist, but to come and interfere on almost every conceivable occasion, either through the Revenue or the Judicial Department. Nothing is to be settled, it would seem, out of Court and by private agency. I am sorry to see the unqualified assertion of such a principle. The Hon'ble Mr. Evans has already drawn attention to it, and I hope some substantial improvement may yet be made in this matter during the progress of the Bill.

“Again, the divisional authorities speak of considerable increase of establishments as one of the inevitable results of this legislation. Thus, in regard to Division Chittagong, the Commissioner says that litigation has increased since the last Act, and the tenants are evidently no better (see tables previously quoted). Evidently more complicated provisions will necessitate new establishments. In Rajshahye the new provision as to deposit of rents will require new establishments. In the Dacca Division, the demarcation of khámár lands (which is considered objectionable there and elsewhere), will require heavy establishments. Dacca, my Lord, is in East Bengal, of the character of whose people the Hon'ble Mr. Evans has told us at the last meeting, and you may usefully consult the records.

“Taking yet another view of the case, our colleagues, the Hon'ble the Mahárájá of Durbhunga and the Hon'ble Peári Mohan Mukerji, are both dissatisfied with the whole work, and I believe it is now clear that the measure is not

1885.]

[Rao Saheb V. N. Mandlik.]

suiting to the circumstances of Behar. Will it benefit Bengal? I fear the evidence before me does not permit of my giving an unqualified answer in the affirmative. As I have said before, the Local Government has not supplied us with such statistics as the present laws enjoin the keeping of. Were it feasible and useful at this stage, I should have agreed to receive further evidence. But we are not now experimenting on inert matter which obeys certain natural laws, and with which you can repeat your experiments almost regardless of time. Such a method of experiment is not applicable to the subject before us. The state of the parties affected is, no doubt, undergoing some change; and yet it cannot be said that it has gone on so long as to have produced new combinations which the district officers have not already reported upon. And there is a certain subordinate official agency to which I would not now refer for further reports. I shall briefly explain what I mean by this observation. Thus a subordinate officer in Bengal submits a report which to me is quite a curiosity. He allows two days only to respectable gentlemen in his subdivision to submit their opinions. His own report is simply ludicrous. He has gone through the Bill, which, he says, provides necessary safeguards against the zamindars; he ventures to remark that more than sufficient privileges have been granted to the tenants; he would rather have seen a simple speedy mode of recovery of arrears and protection of tenants from illegal exactions and harrassing enhancements. When saying this he forgets that he has already considered the Bill sufficient in these respects. As if, however, thinking he had been doing too much, he again condemns the Bill as tending to create multiplicity of intermediate tenures detrimental to actual cultivators of the soil, and as likely to prove of doubtful expediency and productive of litigation. Then comes the final touch. He says:—‘*The Bill is a very complete one, and I am unable to offer any suggestion.*’ The fact seems to be that the writer has no confidence in himself; how can he expect that others should confide in him?

“I am unable, my Lord, to say how the multiplication of such evidence will be of any value, and there are some more specimens of it on both sides. In fact, some raiyati petitioners in Orissa have already picked up a kind of phraseology which is scarcely parliamentary. I would, therefore, not be a party to ask for further evidence on this occasion. We cannot artificially isolate the subjects of our inquiry; and there have been no violent social or economic changes which can have altered the social and economical institutions of Bengal or the character of its people since the last district reports were framed within one year. If there were any such changes, the Local Government would doubtless have sent up all the materials to this Council.

“Pursuing the same subject and working at it from another point of view, we must see what we have really to do. The legislation of 1859, as amended in 1869, the proceedings of the Commission of 1881, and the discussions that have been now going on for three years, are all before us. And it seems to me the point that is being lost sight of is this. Are we now going to construe for the first time the Regulations of 1793, or those Regulations along with all amendments up to this date as viewed by the conduct of all the parties concerned, namely, the Government, the landed proprietors and the tenants? A good deal has been said on both sides in regard to customs, but I take it, as a rule sanctioned by high authority, that a custom cannot be acknowledged as a basis of legislative action, unless it has been consciously acted upon by the people as a rule of their conduct in the practices of every-day life. Unless it is so, I fail to see on what foundation it is to stand, and unless it has a foundation I should be chary of accepting it as a guide. Mr. Longfield, in his paper on ‘The Revenue of Land in Ireland,’ printed in the collection of essays published under the sanction of the Cobden Club, gives the following criterion for judging of property in land, and this I think may be safely taken as a guide in this discussion. . He says:—

‘The rights of the present owners do not depend upon the truth of any theory respecting the origin of proprietary rights. It is a rule of natural justice that says that, if I encourage a stranger to buy from a wrongful owner property that is really mine, I cannot justly press my own claims against the purchaser. This is the case with land in every settled country. The present owners either themselves purchased the land or derived their rights under those who purchased it with the sanction of the community represented by the authority of the State. In many cases the State itself received part of the purchase-money from stamp-duties on the purchase-deeds.’

“Again, a high authority has laid down (Kent on American Law) that to complete the right to property the right to the thing and the possession of the thing must be united.

“What, then, are we now to do? I have tried to give a brief view of the Bill of 1883 taken by some of the leading officers who are in the same position as I am now, but who have the actual work of the administration on their hands, but I fear I have not done them justice for want of time. If we examine the Bill, we have to see what mischiefs it will suppress, and what remedies will be advanced by it. Viewed in this light, it seems to me that the *khudkásht* raiyat should have been allowed to remain undisturbed. *Khudkásht* is a well-known term, and, if necessary, its equivalent might have been simultaneously given, but neither the ‘settled raiyat’ nor the ‘resident raiyat’

1885.]

[*Rao Saheb V. N. Mandlik.*]

supplies its place. *Khudkásht* contains its own definition, and its attributes have a well-known history of their own.

“In respect to another subject I have a few words for this occasion. Though the present is not, strictly speaking, a revenue law, it will indirectly affect the revenue administration of the country, and it occurs to me that now that the subject has been exhausted threadbare, there ought to be no artificial restrictions on the quantity of zamíndári or raiyatwári holdings. If nine-tenths of Bengal are now under cultivation, and the remaining tenth is waste, it cannot affect any tenant if the proprietors of that waste land were allowed to work it, or to sell it or to contract with lease-hold tenants so as to reduce it into cultivation. That they have allowed it to remain uncultivated is a circumstance that has contributed to their own loss. That it has not been put on their rent-roll is, I conceive, because no rent has been derived by letting it, either by *batai* or cash rates. It therefore could not appear as cultivated land, either in their own or the Government registers, but why should there be a legislative prohibition to the proprietor making it his *khás* land, which it substantially is, and still more why its reclamation should be clogged with unnecessary restrictions is what I cannot see. When this and such like arguments are urged, one is referred by the Bengal Government to customs of former Governments for power to do so. On proper occasion, nobody advocates the non-exercise of superintending powers by our own Government within constitutional limits. But I am supported by high authority in protesting against an improper application of such examples. A constitutional and well-administered Government like our own can hardly set up the effete administration of Bengal in the 18th century as a model before us to copy. The provisions which are themselves cited in another part of the paper in connection with a similar example were repealed as being *obsolete* so long ago as 1876. The process of comparison is therefore, I must say with great deference, logically vicious.

“If there was any fair scheme applicable to both sides allowing such land to be converted into raiyatwári holdings on a graduated scale to be agreed to on both sides, I should have been prepared to take such improvement as a good start and some tangible good might have been attempted. This portion of the Bill is not favourably reported upon in the district papers before us.

“In regard to homestead lands, I think, unless such lands are connected with the raiyat's agricultural land of the village, mere outsiders should not be allowed to hold them. This is, I believe, the customary law, and as the native community is situated, it is, I think, a salutary provision. Neither the land-

lord nor the cultivating raiyat should be permitted to dissociate the one from the other. Neighbours' quarrels in matters of adjoining lands are the worst in any country, but when to other difficulties social and religious ones are added, the cup overflows to the detriment of the whole village community, I trust, therefore, that this subject, along with others, will be duly considered. The papers referring to Behar on this subject are important and deserve careful consideration.

“ Another subject on which I am bound to express my opinion in this place is the restriction on the freedom of contracts generally. Over a wide country, containing 68 millions of inhabitants, the Government of India has doubtless had before it cases of localities or of a class or classes from which this liberty may, on due cause being shown, be sometimes withdrawn; and when we remember that under the infancy of the land law (and in several parts of the country the law as it stands now), does not permit of transfer of occupancy-holdings by contract, I may accept the present measure as a tentative solution of the difficulty so far as the tenants are concerned. But, on the other hand, with regard to waste lands on which nobody has settled, I should prefer all contracts being left free as heretofore, subject to the equitable jurisdiction of Courts of law. This view is also supported by the evidence of the district authorities. It occurs to me that while one side to this controversy would deny anything which will affect their rent-roll, the other cannot make up their minds to distinguish what is well known throughout India as *swámitwa* or right of dominion and tenancy. I am bound to say here at once that I agree with neither. The Bengal Revenue-officers do not support such a contention. Why is the legislature to attempt to square the zamíndár to fit into some new imaginary official circle ?

“ There are some other matters of which proper notice may be taken when they come up for discussion. While the Bill enacts several new provisions of law of questionable utility, and which will increase not only the work of district officers, but introduce a larger interference of State agency into the private affairs of the people than is either necessary or desirable, no positive provision, as it seems to me, has been made for relieving large classes both of tenants and landholders, who I think ought to be relieved. It appears clear from the papers before us that sub-letting is the standing evil to which a large amount of the sufferings of the Bengal raiyat may fairly be attributed. This may be seen particularly by referring to paragraphs 14 to 17 of Mr. Cotton's memorandum, prepared for the President of the Select Committee on the Tenancy Bill, which,

1885.]

[*Rao Saheb V. N. Manjlik.*]

according to His Honour the Lieutenant-Governor, merits every attention, Mr. Cotton says:—

‘In one respect, however, the cultivators of the soil undeniably are placed at a disadvantage by the practice of sub-letting, for it is a peculiarity of the system; although these tenures and under-tenures often comprise defined tracts of land, a common custom is to sublet certain aliquot shares of the whole superior tenure, and in consequence the tenants in any particular village of an estate are often required to pay their rents to two, or more than two, and often to many different, landlords.’

“Although, as Mr. Cotton remarks, following the historian Hallam, that such a result is by no means unnatural, still that it is not a necessary result may I think be safely inferred from the papers before us. Thus the report of the Officiating Collector of Shahabad in regard to *guzáshta* holdings is in this connection valuable as showing that in places like Bhojpur those who cultivate their own lands on these tenures are very well off. I know that it is not correct to generalise from limited data, because property both acts and is acted upon by those who hold it; but if it is intended, on proper occasions, to help the creation of small properties with distinct responsibilities and with provisions for actual sub-divisions amongst the sharers, I think opportunity may now be taken to enact some provisions which would be an improvement on the present state of things.

“As regards our present course I would have voted for temporary relief being given to places like Mymensingh and Dacca by passing special measures to meet their cases. There is enough of material before us to support such a course. But this I fear would now be impracticable. It is now nearly six or seven years that the subject has been before either the Government of Bengal or the Government of India, including the deliberations of this Council, and we are given to understand that it will not conduce to the cause of good government if the matter be left in this state till the Council meets again here in December next. The Bengal Government as represented in this Council does not ask for delay in the minutes now before us, although those minutes do not accept the present Bill as a final settlement. The proprietary interest, as represented by the Hon’ble the Maharájá of Durbhunga and Hon’ble Bábu Peári Mohan, request re-publication, and if this were not a virtual postponement for a whole year I should have voted for that course. As it is, any extension of time which can conveniently be allowed to them may, I think, be granted; but if that cannot be, then I hope the Council will consider and discuss all that has to be said *pro* and *con.* for all the interests concerned are equal objects of conservation to the British Government. While I have given my reasons for the course

[*Rao Saheb V. N. Mandlik; Mr. Reynolds.*] [2ND MARCH,

I am going to adopt, I regret I am not disposed to concur in the remarks either here or outside in regard to the opposition of our zamíndár colleagues. The case of the Mahárájá of Durbhunga is as good as proved. If it were not, I still think both he and the Hon'ble Bábú Peári Mohan are bound to state all their objections. The district authorities show what they will suffer, and it is quite natural they should feel it; and if they do, I think we ought to be glad to hear them. They are representatives of a very large and important class. I do not think that it will be just to tax the present landed proprietors of Bengal with the shortcomings, if any, of their predecessors, because I think the progress of legislation as well as the papers now before us make it pretty clear that on the whole they have done their work well. But now comes another agency into greater prominence, and with the light which is thrown on their condition from both sides, it is clear that neither has arrived at its goal.

“What then are we to do? The Bengal Government calls for immediate action. This is supported by the hon'ble member in charge, who I feel sure will not rush into any extreme course. A few of the district papers move on the same lines. Though not inclined in favour of the Bill of 1883, they counsel legislation under some of the heads laid down in the Bill on which they favour us with their remarks. My duty therefore is clear; that is to make the most of what we have and not to postpone for another year.

“My Lord, I have already taken more time than I had proposed to myself. I am quite sensible of the imperfections which there may be in my work, but I can assure Your Lordship and my colleagues that I have devoted more hours to it than one is usually credited with doing in this climate. If there are any sides of the question on which light can be thrown, nobody would be more glad to learn than myself, but I have a right to say that I have done my best under the circumstances, and having made these remarks I beg to say that I shall vote with the hon'ble member in charge for the further consideration of the Bill in detail.”

The Hon'ble MR. REYNOLDS said:—“I desire to support the motion that the Council should now proceed to take this Bill into consideration. I do not mean by this to express my approval of all the provisions of the Bill. The dissent which I have recorded from the Report of the Select Committee is sufficient to show that in some particulars of great importance the Bill seems to me to fall far short of being an adequate or a satisfactory measure. But, in my opinion, the faults of the Bill lie mainly on the side of defect. It fails to supply any sufficient check on the improper exercise of the extensive powers

1885.]

[*Mr. Reynolds.*]

which it puts into the hands of the landlords. It must be supplemented by further legislation for the protection and security of the tenant, and I have little doubt that the experience of a few years will show the necessity for such legislation to be imperative. Till that protection is afforded, I can only regard the Bill as a well-intended, but incomplete, measure; a measure to be praised rather for what it aims at, than for what it effects; a measure marking, it may be, a stage upon the journey, but leaving the country still a long distance from the desired goal. Holding these views, I still think that I can consistently vote in favour of the motion before the Council. If the principles which the Bill as originally introduced was intended to establish had been repudiated, or its objects had been formally abandoned, I should look upon the question in a very different light. In that case, instead of voting to take the Bill into consideration, I might have been more disposed to vote for dropping it altogether. But the difference between myself and the hon'ble member in charge of the Bill is not of this serious character. It is a difference of degree, not a difference of kind. I do not understand that the hon'ble member has, in any way, receded from the position which he took up in his speech on the 13th of March, 1883, when the Bill was referred to the Select Committee. He apparently believes that the Bill in its present form redeems the pledges which were given when it was introduced, or at least that it goes as far in that direction as is justified by the evidence laid before the Select Committee. In this belief I do not agree, but this need not prevent my consenting to discuss the details of the Bill as an instalment of the legislation necessary to a final settlement of the question. An affirmative vote on this motion seems to me to imply that it is desirable to legislate upon the subject, and that the provisions of the amended Bill do not go beyond the limits of the power of interference which the Government reserved to itself at the settlement of 1793; and further, that the general lines upon which the Bill is drawn, and the objects at which it aims, are just and reasonable, and in accordance with the wants of the country. It seems to me that the Bill, insufficient as I consider it to be, does satisfy these conditions, and I am, therefore, prepared to assent to its being taken into consideration by the Council.

“I willingly and thankfully acknowledge that the Bill contains many valuable improvements upon the present law. It lays down principles to guide the Courts in determining whether a tenant is a tenure-holder or a raiyat: it provides a simple procedure for the registration of the transfer of tenures: it does something towards strengthening the position of the occupany-raiyat: it simplifies and facilitates suits for the enhancement of rent: it establishes an

admirable system for the commutation of rents payable in kind: it prescribes excellent rules for instalments, receipts and interest on arrears: it encourages improvements: and it protects the interests, both of the parties and the general public, in cases of disputes between co-sharers. The chapter on the preparation of a record-of-rights contains provisions which will be equally useful to landlords and to tenants. The sections on the record of private lands will put a stop to that illegal misappropriation of village lands as *khámár* which has been too often practised in Behar. The rules for the protection of sub-tenants when the interest of the superior holder is relinquished or transferred, the restrictions upon such contracts as are opposed to the objects of the law, the power given to apply for a judicial determination of the incidents of a tenancy—all these are, in my opinion, points in which the Bill applies useful and equitable remedies to evils for which the existing law does not adequately provide.

“ It is therefore the more to be regretted that a measure which contains so much that is good should be marred by defects which not merely detract from its usefulness, but which may result in aggravating the mischief which the Bill is intended to counteract, and in turning what should be the raiyat's protecting shield into an instrument of exaction and oppression. The opportunity has again been afforded us which was neglected in 1793 and misused in 1859, the opportunity of placing the relations of landlord and tenant on a secure and permanent basis; of defining the rights and obligations of each; of ensuring, in accordance with immemorial usage, fixity of tenure at fair rents to all cultivators of the village lands; and of facilitating the landlord's recovery of his dues so long as he restricts his demands upon the tenant within equitable limits. It is to be feared that, once more, the opportunity will be suffered to pass by. This Bill, by confining the right of occupancy to the village in which the tenant has held land for 12 continuous years, fails to give the occupancy-raiyat that fixity of tenure to which he is justly entitled. The sections relating to the enhancement of an occupancy-raiyat's rent give the landlords a sure and speedy means of enhancing rents, without providing any sufficient check on the levy of further enhancements in those areas in which rents are already as high as the land can properly bear.

“ If the protection given to the occupancy-raiyat is thus insufficient, the defects of the Bill, as regards the non-occupancy-raiyat, are still more conspicuous, and are likely to lead to results still more deplorable. The non-occupancy-raiyat is entitled to full consideration at our hands, for he is really the offspring of our own legislation. We have been told time after time, by the

1885.]

[*Mr. Reynolds.*]

landlords and their advocates, that the occupancy-raiyat is the creature of Act X of 1859. Never was a statement more inaccurate, or indeed more directly opposed to the fact. The occupancy-raiyat dates from a time whereof the memory of man runneth not to the contrary. But never till 1859 was it the law in Bengal, that a resident raiyat cultivating village lands to which he had been duly admitted, which he had held for ten or eleven years, and for which he was willing to pay the established rent, could be ejected from his holding at the pleasure of his landlord by a mere notice to quit. It is the non-occupancy-raiyat who is really the creature of Act X of 1859.

“The Bill not only does practically nothing for this class of tenants, but in some respects it puts them in a worse position than they occupy now. It was left to the Courts to deduce from Act X of 1859 the doctrine of the landlord’s power to eject, and the deduction seems to have been made for the first time in 1874, but it is now proposed to embody in the Statute-book a distinct recognition of this power. Under the present law, the zamindár can prevent the accrual of the right of occupancy by merely shifting the raiyat from one field to another: under the Bill, he will be tempted to evict him from the village altogether. A tenant so completely at the mercy of his landlord, must evidently submit to any demand of rent which the latter may think fit to make. Even if he is allowed to acquire a right of occupancy, he will only be permitted to do so on payment of an excessive rental: and, under the operation of the rule regarding the prevailing rate, this excessive rental will be used as a lever to raise the rents of all occupancy-raiyats in the village. The evil consequences of leaving the class of non-occupancy-raiyats unprotected were clearly foreseen and forcibly pointed out by the Government of India in its despatch of the 17th October, 1882, to the Secretary of State: and it is, therefore, a matter for surprise as well as for regret that the amended Bill leaves such raiyats practically without any protection either as to the amount of their rent or as to the security of their tenure of the land. The established principle referred to by the Court of Directors in 1792, as the maxim alike of the Moghul and of the British Governments, that ‘the cultivator of the soil duly paying his rent should not be dispossessed of the land he occupies,’ seems to have been lost sight of. In a previous passage of the same letter, the Court of Directors had plainly declared that the object of legislative interference by the Government between landlord and tenant should be ‘to prevent the raiyats being improperly disturbed in their possession, or loaded with unwarrantable exactions.’ But this Bill allows the raiyat to be ejected at the mere caprice of his landlord and it gives him no adequate security against the most exorbitant demands of rent.

The extension of the right of occupancy to the great mass of settled cultivators has been put forward, time after time, by successive authorities as one of the principal objects at which legislation on the rent-question should aim. The Famine Commission and the Government of Bengal have urged, in language as strong as it is possible to use the great importance of this extension: the Rent Commission proposed to give a qualified right after only three years' occupation: the Government of India, in 1882, went even further than this, and recommended that the right of occupancy should be declared inherent in the status of every cultivator of raiyati land. The hon'ble member in charge of the Bill is still prepared, I imagine, to maintain the principles laid down in that despatch to the Secretary of State. But I would ask him to consider what extension of the right of occupancy is to be looked for from a measure which leaves the landlords the fullest power to prevent its accrual over all lands in which it has not already been acquired, and over lands in which it now exists, but which may hereafter revert to the landlords by purchase, by death without heirs, or by abandonment by the occupancy-tenant. I would ask him to ponder the serious warning with which the 8th paragraph of that despatch concludes, that 'the old series of litigation, enhancement, and ejection will recommence; and in the course of another generation the percentage of land thus acquired will be sufficient to render necessary a re-opening of the whole question, and will inevitably involve fresh interference on the part of Government.' I would ask him to reflect that out of 67,578 occupancy-holdings transferred by private sale during the past year, no less than 16,500, or about 25 per cent., were purchased by zamindárs or traders: and then to say whether the warning conveyed in that paragraph is not likely to be more than justified by the working of this Bill.

"These, then, are the faults I find in the Bill: first, that though it puts the occupancy-raiyat in a stronger position than he now holds, it does not give him complete security of tenure: secondly, that it greatly increases the facilities for the enhancement of his rent, without laying down any ultimate limit beyond which enhancement is in no case to go: and thirdly, that the protection it gives the non-occupancy-raiyat is altogether inadequate. The hon'ble member in charge of the Bill, to whom I listened with the greatest admiration, and whose speech was equally distinguished by the lucidity of its statements and the fairness of its arguments, will not deny that in all these three particulars the Bill in its present form is a far weaker measure than the Bill which was referred to the Select Committee. He has contended, it is true, that the Bill is a much better measure than I have represented it to

1885.]

[*Mr. Reynolds.*]

be. He noticed, in particular, the points of the settled raiyat, the prevailing rate, the gross-produce limit, and the position of the non-occupancy-raiyat; and on all these points I am willing to admit that he adduced reasons of considerable force in favour of those conclusions of the Select Committee which are embodied in the Bill. As the motion actually before us is merely the preliminary motion that the Bill should be taken into consideration, I do not desire to discuss these questions in detail on the present occasion. Each of them will come before the Council in connexion with amendments, of which notice has already been given. I will only say now that, whatever may be urged in support of the Select Committee's decision upon each of these points, what the Council has to look at is the effect of the Bill as a whole. There may have been unanswerable reasons for maintaining the prevailing rate, or for striking out the gross-produce limit, but the general result of the rejection of the proposals of the Bengal Government on these and other cognate matters has been, in my opinion, to leave the raiyat without adequate protection for his rights. And when the hon'ble member quotes me as an authority for the abandonment of the provisions for compensation for disturbance, I think it only fair to myself to point out that I objected to those provisions, because I thought compensation for disturbance an insufficient check. I thought it probable that the raiyat would not take his compensation and go, but would submit to the enhancement and remain. My objections are not disposed of by the removal of the check, without the substitution of anything more effective in its place. On the whole, I am not prepared to withdraw the opinion I have already expressed in my recorded dissent, that the Bill gives the landlords a power which is not sufficiently controlled or limited, and that the exercise of this power will naturally lead to results inconsistent with those rights of the tenants which the Bill was designed to maintain, and disastrous to the agricultural interests of the country.

“ The nature of the further legislation, which will be necessary to supplement and complete this Bill, is a point upon which I do not propose to touch to-day. I shall have an opportunity of noticing it hereafter, when the motion for the passing of the Bill is submitted to the Council. At present, I desire only to make it clear that my assent to the proposal to take the Bill into consideration does not imply my acceptance of the Bill as containing any measure of completeness or finality. With this understanding, I am prepared to vote for the motion, and I would add that I see no advantage in the proposal that the discussion should be deferred, or the Bill re-published. The Bill, as published 12 months ago, is substantially the same measure as that which comes

before the Council to-day. It has been subjected to the fullest criticism, and those who think it goes too far, equally with those who think it does not go far enough, are not in the least likely to modify their views by putting off the debate for a few weeks or months. Experience alone will show how the measure will work, and in what direction its amendment will be necessary. To the results of that experience I am content to appeal. No one, indeed, would rejoice more than myself if my apprehensions should prove to be unfounded. But it is my earnest conviction that this Bill will not prove a final or a satisfactory measure; and, as the Select Committee have not consented to introduce the safeguards which I believe essential to its success, I think it better for the country that the question should not remain in its present state of debate and suspense, but that the measure which commends itself to the majority of the Council should come into early operation, and should be tried by the logic of facts and by the test of results."

The Hon'ble MR. HUNTER said:—"My Lord, I am one of the members of the Select Committee who have not been able to give an unqualified support to this measure. On the second reading of the Bill, two years ago, I felt it my duty to take exception to three of its main proposals. I objected, in the first place, to interfering by statute with the landlord's right to make his own bargain with a new tenant: in the second place, to the produce limit on rent: and in the third place, to the excessive compensation for disturbance. During the passage of the Bill through the Select Committee, these provisions have been expunged, new proposals which seemed to me equally objectionable have been rejected, and it is with much regret that I find myself still compelled to dissent from the report of a body, whose fairness I recognise, and one which has, in my opinion, fought a good fight against extreme proposals from both sides. My regret has been increased by hearing an hon'ble member make use of my dissent in support of a motion which raises the general issue as to the necessity of legislation, and which would postpone legislation for the present., I myself do not understand how any one who listened to the statements made in this Council on the 12th of March, 1883, on behalf of the Government of Bengal and on behalf of the Government of India, can think it either right or expedient that that general issue should now be raised. The Bill came before the Council with the assurances of three Lieutenant-Governors of Bengal that a legislative adjustment of the land question had become necessary for the tranquility and good government of these provinces. These assurances were supported by the opi-

1885.]

[*Mr. Hunter.*]

nion of the most experienced district officers and by a great body of information collected by a special Commission. The Government of India had, after further inquiry, given its deliberate assent to the necessity for legislation—an assent which carried with it the sanction of the Secretary of State. But if doubts still remained in the mind of any member as to the sufficiency of the grounds on which the necessity for legislation had been admitted, I think that the papers placed before us in the Select Committee must have completely removed those doubts. I will refer to only one such paper. Mr. Finucane shows that in a tract in which the rents were excessive, over one-fifth of the cultivators absconded into Nepaul in the course of two years; and that nearly fifth of the arable land went out of cultivation. From another tract, in which the rents were still more excessive, one-third of the population absconded, and an almost similar proportion of the land became waste. Why did these British subjects, some 30,000 in number I am told, fly across our frontier to Native territory? Mr. Finucane's report supplies an answer. 'I noticed people,' he says—'by hundreds, sometimes digging in the field for roots which they gathered for the purpose of eating them. Every year people eke out the scanty meals that their means allow them to provide for themselves by digging for roots. The circumstance attracts no special attention. It is not necessarily a sign that the poorer classes are in distress. And yet I can vouch for the fact from personal experience that the bread or cake made of this root (*chechaur*) is the most disgusting compound a man can put into his mouth: and medical officers have pronounced it to be most indigestible, utterly devoid of any nourishment, and provocative of the most irritating bowel complaints.' My Lord, this description, I am thankful to say, applies only to particular tracts. I do not wish to generalise from it: still less do I desire to infer from it that the Bill now before the Council provides the only or the best remedies for the agricultural distress which Mr. Finucane's report reveals. But I do say that even if we were to reject the repeated assurances by the Government responsible for the tranquility of the country, and if we were to question its assertion that legislation is now necessary for the preservation of peace, yet these and similar statements before the Council most clearly show that legislative interference is necessary in the interests of humanity. Whatever may be my differences in points of detail in regard to the particular remedies proposed, and steady as my opposition has been to what I considered extreme proposals for curtailing the landlord's rights, I think that the native landholders in now raising the general issue as to the necessity for legislation, have adopted a course indefensible in itself, and calculated to do a moral injury to their cause.

“As regards their specific contention for the republication of the Bill, I would ask them what new points are there in the revised measure, which have not already been submitted during a full year to public discussion by the preliminary report of the Select Committee, or by the letter of the Government of Bengal six months ago? I have listened carefully to the speeches of the Hon'ble Peári Mohan Mukerji and the Mahárájá of Durbhunga—in the expectation that some such points would be specified. I have heard that 13 out of the 196 sections did not appear in the Draft Bill. But I have not heard any really new point specified. The truth is that the work of the Select Committee during its second session has chiefly been to reject the extreme proposals, after those proposals had been duly submitted to public discussion by its preliminary Report; and not to insert new provisions of its own. Where a new provision has found entrance into the Bill, it has almost invariably been framed upon old lines. The result of the republication of the Bill, would now be, not to submit new points to public discussion, but to resubmit to public discussion the decisions of the Select Committee upon the old points which have during the past year been amply and publicly discussed.

“My Lord, I have thought it right to state at some length my objections to raising afresh the general issue as to the necessity for legislation, because I shall have to raise several particular issues in regard to the exact form of legislation now proposed. First of all, while I believe that some legislation has become necessary, I do not think that the Council has been placed in the best position to effectively legislate. For, as I have urged in my written dissent, the legislature is asked to deal with the entire relations of landlord and tenant in Bengal, without being furnished with any body of cross-examined evidence to guide its deliberations. I agree with the hon'ble member in charge of the Bill that the process of hearing and cross-examining witnesses in the various districts might have led to agitation. But the absence of cross-examined evidence has, in my opinion, intensified and prolonged the present far more serious agitation. In a country where the expression of opinion is unrestrained, and where each of the great interests is powerfully represented in the Press, it is impossible to enter on a measure affecting the rights of large and influential classes without exciting opposition and agitation of a most determined character. The best way to encounter such an agitation is to meet it with facts, and the examination of witnesses is the ordinary and only practicable procedure for collecting a body of facts which can be relied on in a conflict of interests, such as is involved in this Bill. I agree with the Hon'ble Sir Steuart Bayley, however, that when the measure reached the Select

1885.]

[*Mr. Hunter.*]

Committee, the time had gone past for a peripatetic Commission to take evidence; and I also think that, with the agitation now at full flood, such a Commission would find it very difficult to arrive at the truth.

“If I believed it likely that a delay would enable the Government to collect really important information, or would add materially to the data now before the Council, I should vote for the postponement. But whence is such information to come? If one thing has been made clear by the labours of the Select Committee, it is the extremely meagre and uncertain character of rural statistics in these provinces. The Bengal Government is endeavouring by legislation in its own Council to provide machinery for increasing its knowledge, and for dealing with the administrative difficulties to what insufficient knowledge has given rise. But several years must elapse before the machinery can be brought into working order and produce practical results. Meanwhile we have exhausted all the sources of information which are at present available to the Bengal Government. It has been my business, during the past fifteen years, to acquaint myself with the statistics of each province of India, and to study the sources from which they are derived. More than any other officer of Your Lordship's Government I have had to deplore the inadequacy of the information which we possess for Bengal. I may, therefore, be permitted to say that all the classes of really ascertained facts known to me in regard to Bengal have been fairly used and are now exhausted. I hope that before many years elapse, those facts will have been supplemented by a mass of new information obtained under the Acts now passing through the Bengal Council. But I see no possibility of obtaining that new information within any period, say of six months, during which this Bill could be postponed. Statistics cannot be run up in a night, unless indeed they are to tumble down next morning. If the Bengal Government were to attempt, in the midst of the present agitation, to institute a statistical enquiry on a large scale throughout Bengal, it would merely be deceiving itself and misleading the public. We have not only exhausted all sources of information now available, but we have heard the views of every class and interest which claims to be affected by the measure. A further postponement would prolong the rural agitation in a most undesirable manner: but it would yield no compensating body of new facts.

“The Select Committee has with much patience threaded its way through the conflicting statements submitted to it. The result has in some cases been the rejection of what seemed to me useful proposals. For example, the sale of the occupancy-tenure, which had at one time the approval of the Select Committee,

no longer finds a place in the Bill. It appeared expedient to legalise such sales, not on theoretical grounds, much less from an abstract love of any three letters of the alphabet, but simply because such sales had grown into an established custom in Bengal, and because it would save litigation and prevent extortion, if we gave to such transactions the express recognition of the law. But when the incidents to which the custom was subject came to be discussed, there was no evidence to guide the Committee. Some members maintained that the custom of sale was subject to a fee to the landlord for registering the transfer. Others contested this position; one member thought the fee should be as high as 25 per cent., another thought that there should be no fee at all. In the end the right of sale was dropped out of the Bill, chiefly because no agreement could be come to in respect to the conditions to which the sale should be subject. I regret this result, and I shall give my support to the Hon'ble Mr. Amír Alf's amendment for re-introducing the provision, if he sees his way to attach a substantial fee for the landlord to the exercise of the right by tenant. The position of the hon'ble gentleman and myself in this matter affords a good illustration of our position and that of several other dissenting members in regard to many provisions in the Bill. We dissent not because we disapprove of the measure as a whole, but because each of us wanted to get a little more of his own way in the Bill than he has been able to get. If any one infers from the number of dissents that a majority of the Select Committee is opposed to the Bill as a whole, he will be very completely undeceived when the votes on the motion at present before the Council are recorded.

“I regret, however, to have to call attention to what I conceive to be a fundamental source of weakness in the Bill, arising from its attempt to apply one set of minute provisions for the regulation of rent to two provinces in which the relations of landlord and tenant are so widely dissimilar as in Bengal and Behar. In Behar, owing to over-population and to the consequent competition for land, the difficulty is to secure a sufficient share of the crop to the cultivator. Throughout large areas in Bengal the difficulty is for the landlord to realise his rent. Yet the profound economic differences between agricultural relations in Bengal and in Behar find no recognition in the Bill. Throughout the two years' labour of the Select Committee we were perpetually struggling in the meshes of this fundamental error. In my opinion, the result has been to tie our hands in providing perfectly effective remedies for the tenant in Behar, and for the landlord in parts of Bengal. The Bill has accomplished something for both, but not enough for either.

1885.]

[*Mr. Hunter.*]

“It is also, I think, defective in another important respect. The root of the agrarian difficulty in Bengal is over-population. ‘I consider,’ says Mr. Finucane in describing the wretched condition of the Behar peasantry, ‘that it is only the redundant population of Behar which has brought things to this pass,’ and the minute sub-division of estates ‘creating a number of proprietors whose name is legion.’ The Bill attempts to alleviate the evils arising to the peasantry from a too keen competition for the land by placing restrictions on the enhancement of rent. Such restrictions, when effective, are necessarily made by curtailing the rights of the landlords. But there are two other means of dealing with over-population, namely, the reclamation of waste lands, and the shifting of the people to unoccupied tracts. With regard to reclamation of waste lands, I shall, in submitting an amendment to the Council, shew that the Bill not only gives no new encouragement for such undertakings, but that it places the proprietor, who himself reclaims waste lands, in a worse position than before. With regard to assisted migrations or shifting of the people to unoccupied tracts, I acknowledge that it would be unreasonable to expect any specific provisions in the present Bill. But I hope that the Government may see its way to reconsider this aspect of the question. The waste land uncultivated but capable of cultivation in Bengal and the two provinces immediately adjoining on the east and west is equal to the whole land under crops in Great Britain and Ireland, and large areas of this waste land are to be found close on the outskirts of some of the most overcrowded tracts, especially Behar. The experiment which the Government has hitherto made to promote and assist the migration of the people to unoccupied or sparsely inhabited tracts have been few in number and inconclusive as to their results. But such enterprises have been conducted on a considerable scale by private enterprise in several parts of the country. I shall cite only two such undertakings. In Birdpur, in the Gorakhpur District, over 23,000 persons have been settled on 250 reclaimed villages, on a tract which forty years ago was swamped and heavy jungle; while the success of the new Sonthal colonies in Assam shows how much can be effected by State aid combined with private organisation. The Government has rendered migration possible by opening up railways, but experience shows that the mere possibility of transport does not suffice to make the people move on. This Bill, in attempting to mitigate the evils of over-population by placing restrictions on the enhancement of rents, tries to remedy what is really a national difficulty at the cost of a particular class. I admit that the legislature is justified in regulating the monopoly in land which over-crowding and over-competition for holdings create in favour of the landlords. The permanent remedy for over population is not, however,

to be found in artificial restrictions upon rent, but in adding to the cultivated area, by encouraging the reclamation of waste lands, and by assisting the people to migrate to unoccupied tracts.

“ While, however, I believe that the Bill fails to do all that it might have accomplished, owing to the absence of properly-sifted evidence, and to the fundamental error of attempting to prescribe one set of regulations for two altogether dissimilar provinces, I acknowledge that it does much towards the solution of the questions with which it deals. In the first place, it makes the old law a reality—a reality for the tenants as regards the enforcement of their occupancy-rights within the entire village; a reality for the landlords as regards the enhancement of rent, when such an enhancement can be equitably claimed; and a reality for both landlord and tenant as regards the ascertainment of rent actually due. I am no unqualified admirer of the Bill; but if it had done nothing more than give reality to the uncertain and unworkable provisions of the old law, I should consider myself bound to give it, as a whole, my support. It has been able, however, to do much more than this. It has developed the occupancy-cultivator with all his old uncertainties as to the maintenance of his rights into the settled raiyat. It has given to the settled raiyat a clearly-defined area within which no man can defeat his right to hold his land as long as he pays a fair rent. It has placed a limit to the enhancement of his rent out of Court, and it has given him what amounts to a statutory lease for fifteen years if his rent is enhanced by a suit in Court. Of not less importance are the provisions which render null and void any contract which would prevent the growth of the right of occupancy, or interfere with the enjoyment of the incidents of that right. To the ordinary cultivator it has also secured advantages of great value. In the first place, it gives to every cultivator the presumption that he possesses the right of occupancy in his holding, until the contrary is shown. This presumption is in strict accordance with the facts, if, as has been stated and not contested, that something like nine-tenths of the cultivators of Bengal are at present entitled to claim those rights. The importance of this presumption has been well shown by the hon’ble Mr. Evans in the present debate: and so far as the ordinary cultivator is concerned, the Bill would, in my opinion, have justified its existence, if it had done nothing more than create this presumption in his favour. It has also, however, provided safeguards against his sudden ejection from his holding, and against the unreasonable enhancement of his rent. Unless the ordinary cultivator himself consents to an enhancement, his rent can only be raised by a suit in which the Court shall determine what is a fair

1885.]

[*Mr. Hunter; Mr. Amtr Ali.*]

and equitable rent. The rent thus determined cannot be again enhanced for a term of five years; so that, while the Bill practically secures judicial leases for fifteen years to the occupancy-tenant, it also provides what amounts to a judicial lease for five years for the ordinary cultivator.

“My Lord, these are substantial changes in the existing law in favour of the cultivator. We may regret that these changes afford no general protection to the under-tenant, and no special remedy for the particular circumstances of Behar. But we have the satisfaction of knowing that every one of the changes in favour of the cultivator which the present Bill makes in the old law is justified by the facts, and that the Bill, as revised by the Select Committee, errs by defect rather than by excess. The Hon’ble Sir Steuart Bayley has very fully shown what the measure effects for the other great class affected by it, namely, the landholders. I acknowledge the increased facilities which the Bill provides for the realisation of rent by extending the system of registration, and by creating a new procedure for the record of rights and settlement of rents. But just as I regret that the Bill fails to make adequate provisions for the special needs of the cultivator in Behar, so I regret that it fails to give an adequate response to the demands of the landholders in Eastern Bengal. I do not think that the Bill can be accepted as a final settlement of the land difficulty in either province. I hope that amendments will be carried in this Council which will render the Bill more effective in the hands of both the landholders and the cultivator. But I accept the measure as an important and a valuable instalment towards the adjustment of land rights in Bengal, and I believe that, on the whole, it advances as far towards a final settlement of those rights as we are at present justified in going either by the condition of the country or by the ascertained facts.”

The Hon’ble Mr. AMIR ALI said:—“My Lord,—My views respecting this Bill are sufficiently indicated in the dissent which I have recorded, and were it not for a feeling that I am bound to lay before this Council at some length the reasons which induce me to support the present motion I should have abstained from trespassing on the time of this Council. If I prove too lengthy, my apology will be the proverbial long-windedness of the profession to which I belong.

“I had hoped that we had by this time passed out of the region of discussions concerning abstract principles and intangible theories. I had hoped that the question of the necessity for some legislation of this character had been sufficiently demonstrated by stern facts. The only subject which

remained for determination at this stage was whether the Bill in its present form sufficiently covered the ground which it was intended to traverse—whether it fulfilled thoroughly the objects for which it was introduced? I do not propose to enter here into an examination of that somewhat abstruse question—given the necessity for legislation to regulate the relation of landlords and tenants in this country—whether the State has the power to do so or not; in other words, whether the State, by ensuring the zamíndárs against enhancement or variation of its own demands, (and that in effect is the meaning of the Permanent Settlement,) had abdicated in perpetuity its legislative functions to protect and safeguard the interests of another class—a much larger and more permanent class. If the contention of the landlords on this head is correct, the result necessarily follows that the Government of this country is an incomplete Government, that it has in fact established an *imperium in imperio*, and that, so far as the raiyats are concerned, it has delegated all its powers to the ever-shifting body of zamíndárs.

“The zamíndári argument reduced thus into plain language sounds somewhat absurd, and one can hardly suppose that the zamíndárs, or rather their advocates, mean seriously all that they have urged against the power of legislation possessed by the State. Assuming, however, that the Permanent Settlement was a bar to the State ever interfering between the raiyats and the zamíndárs, the fact that in 1859 the legislature did interfere with the acquiescence or consent of the landlords of that time has, I would contend, removed the bar. It is unnecessary for me to dwell much longer on this branch of the question, for my hon’ble friend Mr. Evans has completely demolished that preposterous argument. However, one observation I would make. Whatever may have been the position of the zamíndár under the Moghuls, whether he was merely a rent-receiver of the territorial revenue of the State from the raiyats, as described by Mr. Harrington, or something more, the legislature, whilst settling the revenue payable to the State in perpetuity, expressly reserved to itself the right, which belonged to it as sovereign, of interposing its authority in making from time to time all such regulations as might be necessary to prevent the raiyats being improperly disturbed in their possession or loaded with unwarrantable exactions. That power, expressly reserved on that occasion, has been exercised repeatedly, and it is trifling to contend that because the State a hundred years ago settled in permanency the revenue payable by the zamíndárs, therefore, it abandoned all its duties and responsibilities towards millions of its subjects.

1885.]

[Mr. Antr All.]

“The question of necessity is one which is certainly deserving of great consideration. With reference to this point I desire to say a few words. Since the year 1870, the necessity for a thorough revision of the land-law has been forcing itself upon the minds of all thoughtful observers. The tension of feeling which had sprung up about that time between the zamíndárs and raiyats had occasioned considerable administrative difficulties. The zamíndárs themselves had commenced to demand some change in the existing law, in order to give them facilities for the realization of their legitimate rents, while the raiyats complained of the arbitrary exercise of the powers of enhancement and eviction. These difficulties were accentuated on one side by the confusion of ideas relating to the subject of tenant-right, on the other by the extravagant claims put forward by the new landlords, who were most tenacious of their rights to enhance the rents of their raiyats. It will be remembered that Act X of 1859 had been passed with the object of providing some efficient safeguards against the exercise of arbitrary power on the part of the landlords. From 1799 to 1859, as His Honour the Lieutenant-Governor remarked in his speech on the introduction of the Bill in Council, ‘feudalism on the one hand, serfdom on the other, were the principal characteristics of the land system of Bengal.’ The legislature no doubt endeavoured to maintain intact ‘the constitutional claims of the peasantry,’ but ‘practically,’ His Honour said, ‘they were submerged in the usurpations and encroachments of the zamíndárs.’ Act X of 1859 undoubtedly effected some improvement in the position of the raiyats, but the rule for the acquisition of prescriptive occupancy-right by a twelve years’ occupation of particular plots of land did more harm than good. And the rule of enhancement based on the productiveness of the soil eventually became a fruitful source of difficulty and trouble.

“In 1873, the Government for the first time awakened to the gravity of the situation. The famous Pubna riots broke out in that year, and since then there have been periodical collisions between raiyat and landlord in different parts of the province. In 1873, Sir George Campbell spoke thus about a definitive settlement of the land question :—

‘If the settlement is to be effective, it must not only get the zamíndárs out of their present difficulties, it must bind them for the future. It must settle all questions of possession, measurement and rates, it must decide who is and who is not liable to enhancement, and it must have power to prescribe a term—a good long term—for which its adjustment is to be binding, and the zamíndárs are not to be allowed to disturb the rates and arrangements made. No doubt this will be a serious undertaking, but it would be an effectual and

beneficial settlement if fairly and thoroughly carried out. The Lieutenant-Governor would not advocate interference unless it is carried to this point.'

"In 1875, Sir Richard Temple, who had taken the place of Sir George Campbell, again brought forward the proposal regarding the amendment of the substantive law, and invited the opinion of the British Indian Association on the subject. In a letter dated 10th of March, 1876, the Honorary Secretary of that body pointed out the defective character of Act X of 1859 in essential particulars, and the necessity for a radical amendment. Before this, in June, 1875, the British Indian Association had already represented that the struggle between zamíndárs and raiyats, due to the indefiniteness of their relations and the readiness of the raiyats to combine in withholding rent, could only be ended by a general revision of the rent law. In March, 1876, whilst the Agrarian Disputes Act was pending before the Bengal Council, our lamented colleague, Raj Kristodás Pál, urged that the indefiniteness of the principles of Act X of 1859 had brought suits for the adjustment of rents to a deadlock. It was in consequence of these repeated representations, and the urgency of the difficulties which had arisen both in Eastern Bengal and Behar, that Sir Richard Temple asked for leave to introduce a measure into the local Council; but before he could get a reply he was sent to Southern India to look after the relief measures. When Sir Ashley Eden assumed charge of the Lieutenant-Governorship of Bengal, he found affairs in this position. The zamíndárs, on one side, were calling out for facilities for the recovery and enhancement of rents; the raiyats, on the other hand, were asking for protection against illegitimate enhancement and eviction; whilst the officers of Government charged with executive administration were of opinion that some measure, by which the existing tension of feeling could be removed should be taken in hand at once.

"It was in view of these signs and shadows of coming events that Sir Ashley Eden strongly urged upon the Government of India the advisability of settling the rent question definitely while the country was tranquil, while seasons were favourable and the people well off, and reason could make its voice easily heard, instead of allowing things to drift on until another famine or a second outbreak of the Pubna riots compelled the Government to take up the subject with all the haste and incompleteness that too frequently affect measures devised under circumstances of State trouble and emergency.

"This Bill, I mean the *original* Bill, was introduced with the object of definitely placing, so far as was possible, the relation of landlords and tenants on

1885.]

[*Mr. Amir Ali.*]

a satisfactory basis. The objects were distinctly defined in the speech of the hon'ble the Law Member—

“(1) To give reasonable security to the tenant in the occupation and enjoyment of his land, and (2) to give reasonable facilities to the landlord for the settlement and recovery of his rent.

“In order to attain the first object, it was proposed to make the following changes in the existing system :—

- “(1) to extend the occupancy-right to all resident raiyats holding lands in a particular village or estate for more than twelve years ;
- (2) to make occupancy-rights transferable ;
- (3) to introduce a fixed maximum standard for the enhancement of rents.

“The disastrous and demoralising consequences resulting from the twelve years' rule of prescription are now recognised by all. It did away with the long-established distinction which had existed from the earliest times between the resident and non-resident raiyats, reducing them all to a dead level of uniformity ; the raiyats claiming rights of occupancy being required under the existing law to prove that they have held for twelve years not merely in the village lands, but in everyone of the particular field or plots in respect of which the right was claimed. When it is borne in mind how frequently the twelve years' prescription is interrupted by a mere shifting of the fields, sometimes by eviction within the term, in other cases by the grant of terminable leases for short periods with the option of renewal, it will become apparent how difficult it is in general for the raiyat to acquire a right of occupancy, or to prove it when it is questioned. Considering the testimony which has been borne from all sides of India to the prosperity of raiyats possessing occupancy-tenure, to their ability to withstand and make head against droughts and scarcities, to tide over in general more successfully such disasters as were caused by the cyclones and the great tidal wave in Deltaic Bengal, it is unjust to charge us with being doctrinaires and theorists in coming to the conclusion that a measure simplifying and facilitating the proof of occupancy-rights is essential to the well-being of the agricultural population of Bengal ; in fact, in endeavouring to restore the occupancy-raiyats to their old position.

“The same fatality which overtook Act X of 1859 in Committee has befallen this measure. Owing to the same spirit of compromise which wrecked

that Act, most of the alterations which have been effected in the present measure at its latest stage have been made, as admitted by the Hon'ble Mr. Evans, in favour of the zamíndárs, and some of the most important provisions for the security of the raiyat and the improvement of his condition have been abandoned, or so modified as to be of little advantage to him. We had expected that the measure now under discussion would give a legal validity and statutory sanction to the custom of transferability of occupancy-holdings; we had hoped that the law relating to the enhancement of rents would be so modified that, supplying to the landlord a more workable method of enhancement, it would protect the raiyats from incessant harassment and perennial destitution; we had hoped that there would be a practical check imposed on rackrenting that some substantial guarantee would be given against the ejection of non-occupancy-raiyats, simply with the object of preventing their obtaining that interest in the soil which would induce them to improve their husbandry and their condition in life.

“The amended Bill falls far short of the just expectations of those who, after all this agitation, would have liked to see a definitive settlement of the land question in Bengal.

“I shall have to say something with reference to each of these points when I move the amendments which stand in my name. I desire, however, to remark in passing that I cannot help regarding the abandonment of the transferability clauses as a serious misfortune. The custom of transferability had grown up in many districts of Bengal and Behar, and was gradually extending itself throughout the province. It had also been conclusively proved that those raiyats who had a permanent alienable interest in all their holdings were more prosperous than those who had no such interest, that their cultivation was better, and that they were more capable of making head against scarcities and famines. In the face of this evidence, to forego all the advantages gained after so much discussion, to leave the right of transferability to custom in the present tension of feeling between landlords and tenants, is to invite the zamíndár to contest the right every time the opportunity occurs. The result of all this will be, firstly, to place a large proportion of the purchase-money in the pockets of the zamíndárs, and, in the second place, materially to retard the extension and growth of the custom of transferability even where it has taken root. I am glad that my hon'ble friend, Dr. Hunter, is willing to give his valuable support to my proposal for the re-insertion of the transferability clauses, and I think I shall be able, when I bring forward my amendment, to meet his views regarding the amount of fee which

1885.]

[Mr. Amir Ali.]

ought to be paid by the raiyat. Probably my hon'ble friend will not object to exempt those *guzáshadárs* whose right is protected by long-established custom from the payment of any fee.

“The objection against a gross-produce limit proceeds mainly on theoretical and *á priori* grounds. It has been said that, if such a limit is adopted, in every case of enhancement by contract, the registering officer will have to enter into a minute and difficult enquiry, and that the same will be the case in Court. I maintain that this argument assumes two points. In the first place, it presupposes an insuperable difficulty in making a fair rough average estimate of the yield of land and its value. Now, I venture to say there is no villager with any knowledge of cultivation who has not a rough conception of the yield of produce and the value of the crop. In the second place, the argument against the gross-produce limit assumes that in the registered agreements to pay enhanced rents the parties do not or will not enter the quantities of land, its nature, capacity, &c. If the statement of these facts will not enable the registering officers to form some rough estimate of the produce limit, I am afraid the Local Government will have to improve its staff of registering officers.

“I may observe here that in the Punjab the land-revenue assessment is limited to the equivalent of one-sixth of the gross produce, and the system has been found to be extremely practicable. If it is practicable in the Punjab, why should it not be workable in Bengal?

“As regards the non-occupancy-raiyat, our contention that the protection which has been given to him by this Bill is utterly inadequate, is borne out by the frank avowal of the zamíndárs' representative that henceforth no non-occupancy-raiyat will be allowed to acquire the status of an occupancy-raiyat; such an avowal would hardly have been made if the guarantee given to the non-occupancy-raiyat against eviction had been adequate.

“If the extension of occupancy-rights among the raiyats be conducive to the general welfare of the community, then there can be little doubt that any loophole for perpetuating tenancies-at-will, for continuing the vicious system of shifting and eviction would be disastrous to the public weal. As population increases, as the demand for land becomes greater, the effort to exclude the possibility of acquiring occupancy-rights will be redoubled. At the same time I desire it to be distinctly understood, that I do not advocate the promiscuous extension of the occupancy-right to non-occupancy-raiyats. What

I want to see is that the latter should be reasonably protected from perpetual harassment. This I submit has not been done efficiently by the Bill. At the same time I admit that the present measure is an improvement on the existing law. The acquisition of a right of occupancy by residence; the prohibition of contracts precluding the accrual of the right of occupancy; the restriction on enhancement out of Court; the validation of the raiyat's right to make improvements, constitute the most commendable features of the present Bill, and I accept it as the first instalment of the inevitable legislation which *must* follow sooner or later to settle the relations of the cultivating classes with their landlords more satisfactorily. My Lord, the hon'ble member in charge of the Bill has referred in kind terms to the services of the non-official members on the Committee. As far as I am concerned, it was a labour of love, for I cannot help taking a keen interest in this measure. The bulk of the peasantry in Eastern Bengal, numbering several millions of souls, belong to my faith, and naturally have a claim upon the Muhammadan member for the time being in Your Excellency's Council. In Eastern Bengal, the agrarian troubles are aggravated by religious differences and the fact that many of the zamíndárs are new-comers. The new landlords, generally speaking, have little or no sympathy with their peasantry, most of whom are Mussulmans. If the law gives them power, say, of enhancement or ejection, it is worked without compunction and without mercy. I say this advisedly. The causes and character of the Pubna outbreak must be familiar to this Council, though apparently they have been forgotten outside this Council Chamber. They illustrate most strikingly the general nature of rent-disputes in Bengal. I will take the liberty to quote here a passage with reference to the outbreak from the Government of India's despatch to the Secretary of State, dated 21st March, 1882:—

'The affair originated in the Isafshahi parganá, formerly owned by the Rájás of Nattore. In the decay of that ancient family a part of its possessions was purchased by new-comers, whose relations with their raiyats and with each other appear to have been unfriendly from the first. Collections were raised by decreasing the standard of measurement and by imposing illegal cesses which were afterwards more or less consolidated with the rent. The raiyats never gave any written or formal consent to the conversion of these voluntary abwábs or cesses into dues which could be realised according to law. In time the rent-rates of Isafshahi came greatly to exceed those of neighbouring tracts.

'Two causes of the dispute were thus a high rate of collection compared with other parganá's, and an uncertainty as to how far the amount claimed was due. A third cause was the violent and lawless character of some of the zamíndárs, and of the agents of others. There had been affrays in which men were killed by spear-wounds. Swordsmen had been sent to

1885.]

[*Mr. Amír All.*]

make collections, and cases of attack by clubmen and of kidnapping are mentioned in the report.'

"It has been stated in this Council that the reasons for interfering in Behar with the status of occupancy-raiyats are non-existent; that the practice of shifting is not resorted to there for the purpose of avoiding the accrual of the right. This statement may be true in the case of considerate zamíndárs like the Hon'ble the Mahárájá of Durbhunga, who, whilst tenacious of their ancient rights, respect and value the constitutional rights of the peasantry. But by way of answer to his criticism on that portion of the Bill which aims at giving a certain degree of security to the occupancy-raiyat and towards facilitating the proof of his right, I would recall to his mind what the zamíndárs of Shahabad, at a meeting held on the 31st October 1880, at Arrah, said on the subject:—

'At present landowners prevent the growth of occupancy-rights by granting leases for five years only, or by changing the lands, or by managing so that a raiyat shall never hold at the same rent for 12 years. In practice the last expedient is found sufficient, as the Courts find claims to occupancy-right not proved unless the raiyat can show that he held the same land for 12 years, by proving that he paid the same rent. Under the proposed law zamíndárs would not suffer raiyats to remain for three years.'

"The Hon'ble Mr. Evans has urged that, if the circumstances of Behar were so exceptional as they were represented to be by the officers of Government who had reported on the subject, there ought to have been two Bills, one for Behar, another for Bengal. I admit that, if we had adopted this course, we would have been better able to deal with details; but on that principle there ought not to be two Bills, but four Bills—one for Eastern Bengal, another for Central Bengal, a third for Northern Bengal, and a fourth for Behar; for the conditions of rural economy in each of these tracts are dissimilar to each other. I doubt, however, whether the public or the people would have thanked the legislature for such a course. Besides, the evils which the legislature desires to remedy, the circumstances which it desires to direct and control, are not after all very different in either of these parts. The landlord everywhere desires to recover his rent easily; the raiyat everywhere wants to be allowed to leave in peace; and the legislature has before this dealt with the province as a whole. The limit of two annas on enhancement by private contract has been strongly objected to. It is said that such a restriction is not only opposed to all the principles of freedom of contract, but that it will prove practically mischievous, as it will always drive the parties into Court for obtaining a higher enhancement. My Lord, how far the rules of poli-

tical economy are applicable to a country where the mass of the people live from hand to mouth is a question which was answered effectually, though at the cost of a million of lives, during the Orissa famine. The Bengal Government on the occasion attempted to deal with the calamity which had overtaken the country in strict accordance with the rules of political economy, but the results completely falsified the expectations entertained at the time from the application of the economic nostrum. 'When political economy speaks of freedom of contract,' were the memorable words of Sir Evelyn Baring used in this very hall, 'it means that free choice, dictated by intelligent self-interest, is the most efficient agent in the production of wealth.' Can any one, who is acquainted with the condition of the millions of raiyats, whose holdings do not average more than two or three acres, and who pay a rent of less than five rupees a year, can any one who knows the circumstances under which this vast mass of pauperised cottiers, living always on the verge of starvation, till the soil, say that these men can exercise a free and intelligent choice in their contracts?

"My Lord, I am afraid I am encroaching too much on the indulgence of the Council. But I cannot help being somewhat long, in spite of the charge of prolixity that may be brought against me. Political economy is thrust down one's throat at every turn of the question; indeed, so often, that I am tempted to quote a passage from the master of political economists, which I hope will be taken to heart by the warmest upholders of zamindari rights.

'Rent,' says Mill, 'paid by a capitalist who farms for profit and not for bread may safely be abandoned to competition; rent paid by labourers cannot, unless the labourers were in a state of civilisation and improvement, which labourers have nowhere yet reached and cannot easily reach under such a tenure. Peasant rents ought never to be arbitrary,—never at the discretion of the landlord; either by custom or law it is imperatively necessary that they should be fixed, and, where no mutually advantageous custom has established itself, reason and experience recommend that they should be fixed by authority,

"My own view is that it is not only necessary to impose a limit upon private contracts, but that, in order to be efficacious, a similar limit should be introduced upon enhancements in Court; otherwise I believe the wholesome provision will become practically valueless.

"The remarks of the Hon'ble Bábú Peári Mohan Mukerji, that there is practically no non-judicial power of distraint given by the Bill for the realisation of rents, are perfectly true. Undoubtedly in the despatch to which both the hon'ble member and I myself have referred it was proposed 'to provide for the more speedy realisation of arrears of rents, *when the rates are undisputed*, by a

1885.]

[*Mr. Amír All.*]

modified method of distraint.' It must have escaped the notice of my hon'ble friend the importance to be attached to the expression 'when the rates are undisputed'. Is there any case in which the rates are not disputed? Probably, in some districts, or rather estates, bordering on Nepal and other frontier tracts, which give the raiyats a facility to disappear after raising their crops, a modified power of distraint might prove useful; but when the Committee came to consider the abuses to which this power is open and the oppressions practised under its guise, it was thought advisable not to leave to the zamíndár the power of distraint at his own free will and according to his own method. The provisions of Chapter XII are, I think, in accord with the Government of India's proposal in the despatch referred to.

"It has been contended that we have no cross-examined evidence furnishing, as it were, the groundwork over which the legislative structure has been built. A great deal of money has already been spent in various quarters in the course of these discussions, and probably, if the Select Committee had decided to hear cross-examined evidence, a little more would have been put into the pockets of lawyers. But whether evidence so collected would have been one iota more valuable than the testimony of competent officers and thoughtful observers is a question which I cannot answer. I have pointed out the features in the Bill, which stand out as marked improvements over the existing law. I have also pointed out the features where it falls short—miserably short—of the just requirements of the present situation. I trust that, before the final vote is taken, the objectionable features in the Bill will be removed, the most important of them—the most dangerous—being the ground of enhancement based on increase in the prices of food-crops.

"This ground of enhancement, besides being open to various economical objections, furnishes the landlords with a most formidable and trenchant weapon for enhancement of rents, the use of which in many parts of Bengal and throughout Behar must prove ruinous at no distant date to those raiyats whose rents are already high enough. In defence of this proposal it has been put forward that enhancement on the ground of increase in prices does not take more of the crop from the raiyat; in other words, that it is the value of the crop expressed in larger terms owing to the diminished value of silver. This is undoubtedly a very specious argument, but in spite of its speciousness I maintain that it is extremely unfair to the raiyats. On examining the argument even on the basis of political economy, it is seen that it leaves out of consideration an increase in the necessities of a raiyat, and a larger expenditure on account of what

he has to buy. Furthermore, it is clear that the allowance for cost of production may often prove totally insufficient. For these and other reasons, which I shall mention more particularly when I move my specific amendments, it seems to me that the effects of this ground of enhancement have hardly yet been realised to their fullest extent.

“As the question stands at present, I accept the Bill as a step in the right direction, and in looking at it in that light, and approving entirely of the principles which it embodies, I vote for the motion that the consideration of the Bill should be proceeded with without delay.

“With reference to the motion for the re-publication of the Bill, I desire to mention that, had I believed any possible object would be gained by such a course, that the zamíndárs or raiyats would become by delay more willing to make concessions to each other, I might have been inclined to vote for the postponement of the consideration of the Bill until next session. As it is, I believe a postponement will keep the country in a state of feverish excitement, intensify still further the bitter feelings existing between the two classes, and prove of no avail to anybody.”

The Hon'ble MR. GIBBON said :—“My Lord, with reference to the amendment proposed by the Hon'ble Peári Mohan Mukerji, that the Bill be re-published, and that the consideration of the measure be deferred for at least three months, I must, I am sorry to say, oppose the amendment. The state of the country is such, the agitation for and against the measure is becoming so widespread, I am convinced that it leaves only two courses open to Your Excellency's Government—either to proceed with the measure, or to abandon it for ever ; any third course will be fraught with danger to the public peace, as well as ruinous to the interests of both landlords and tenants. For six years the provisions of the Bill have been in some shape or another subjected to public criticism ; every alternative proposal, every impossible crotchet has, been discussed and threshed out ; and, although the Bill may contain a few sections that were not contained in the draft Bill submitted to the Committee, it contains no provisions that have not already been subjected to public criticism.

“I am sure no arguments could be adduced for or against any of its provisions that are not contained in the mass of correspondence already submitted.

“Believing such to be the case, I cannot realize what good purpose is to be served by the delay asked for. On the contrary, in the interests of the landlords more so than in the interests of the tenants, delay is to be deplored. We have

1885.]

[*Mr. Gibbon.*]

nothing to gain by the delay, much to lose. Judging from what I see and hear around me and in my work, I believe further delay, more indecision, means ruin.

“The fears of the zamíndárs have been excited fully as much by the many crude proposals from time to time submitted as from anything contained in the Bill. Their fears of the measure, their public utterances, are having their effect on the minds of their tenants, and we must not be surprised if their tenants measure their own gains by the estimate placed by the zamíndárs on their own losses.

“The raiyats believe that the Bill will give them fixity of tenure without any reference to the means by which they may acquire possession of the land; a right to sub-divide and transfer their holdings piecemeal; freedom from enhancement; freedom from payment of rents; a general right to appropriate other peoples' property. We now require something definite, something final, to recall us to our senses. If the proposal of the hon'ble member is carried, we may expect to see the tenants acting up to the tenor of their convictions, defying all law, following the bent of their inclination.

“The Courts are at present blocked with litigants, but unless something is decided upon quickly the work the Government officials are now required to do will be child's play in comparison with the work that would be cast upon them.

“If the Bill is not proceeded with or abandoned, Your Excellency's Government must be prepared to substitute one of a very summary nature. Your Excellency's Government must be prepared to manage half the zamíndáris of the country, for I am quite sure that if the present agitation is allowed to proceed unchecked we will not be able to manage them for ourselves.

“The only means of checking this agitation is to let us know at once the best and worst we have to expect under the Bill.

“If I understood the Hon'ble Mahárájá Bahádur correctly, he would even at this stage of our proceedings delay the progress of the measure until a Commission of Enquiry has been held. A Commission issued now with the declared intention of basing legislation on its report would have a most demoralizing effect on the country; it would divide the country into two hostile camps, bespattering each other with mud; few among us would see the end of it; all would regret the result.

“ My Lord, with reference to the subject-matter of the Bill, so much has been said on almost every one of its provisions that little is left for me to say. For me to attempt to improve on the many admirable arguments adduced in support of the views I hold I conceive to be an impossible task—also a needless one to attempt to refute, in one set speech, the many arguments with which I differ—a waste of time—with so many amendments on the notice-paper,—an amendment, sometimes two or three, on every important section in the Bill. I may hope that ample opportunity will be afforded us of discussing our respective differences to some better purpose hereafter.

“ With reference to the much-disputed point as to whether the Bill in any manner infringes the terms of the Permanent Settlement, or whether the Government, in now legislating as it is about to do, only acts up to the powers it reserved to itself in the Regulations, I have no wish to enter at any length. I would only say that, in my opinion, with the exception of section 18, which does to all intents and purposes transfer the proprietary right in the soil from one class of persons to another, the Select Committee, and through it the Government, have carefully kept within its powers. The Bill, with the exception of this one section, does nothing to interfere with the proprietary right in the land, but it does overmuch to regulate the landlord’s dealings with his tenants.

“ I will now try to confine the few remarks I wish to make to those portions of the Bill which are to regulate our business transactions, which instruct us in the manner we are to conduct ourselves towards our tenants, and the difficulties we shall have to contend against in following its instructions—points which it appears to me have been lightly passed over or not gauged at their true significance. The Bill as it stands will do all the hon’ble member in charge of it has declared it will do to secure to the tenant the uninterrupted enjoyment of his legitimate rights; it has made the position of the raiyat, both, occupancy and non-occupancy, impregnable; and in one most important respect it will effect more for them than the hon’ble member has taken credit for; by a small and as yet little noticed change made in the procedure free the country from wholesale enhancement under pressure.

“ The alteration I refer to is the substitution of immediate suit for the present practice of issuing ‘ notices of enhancement through the Courts months previous to the introduction of the suit.’ The practice of issuing notice of enhancement through the Courts has done more to facilitate wholesale

1885.]

[*Mr. Gibbon.*]

enhancement of rents of estates than any other provisions of the present law. Notice of enhancement has necessitated present legislation and made this Bill possible. This change about to be made in the procedure will, I am sure, be beneficial ; its effects will, I hope, be far-reaching ; it will, I hope, make the restrictions placed on voluntary enhancement under section 29 unnecessary.

“ That legislation is to a certain extent, as provided by the Bill, necessary, there can, I think, be no doubt; but whether in the early stages of the controversy the alteration of a few sections in the present law would not have proved sufficient may, I think, be allowed to be an open question. We will admit that you have gone too far to recede : you must proceed, and we, both landlords and tenants, are wise if we accept the inevitable with a good grace. But with reference to this Bill many hon'ble members, many persons who have taken part in this controversy, when they fail to meet the argument that it is not suited for Bengal, fall back upon the argument that it is required in Behar. Nothing is too bad to say of Behar ; no restriction is too severe to be placed on our actions. If the measure is required for Behar and is not required for Bengal, we should withdraw that Province from the sphere of its operations. If the Council are of opinion that the Bill is required in Behar and not in Bengal, we should drop it for Bengal and proceed with it only with reference to Behar. For my part I am happy in believing that we in Behar are no better, no worse, than our brethren in Bengal ; that our tenants are not the down-trodden, poverty-stricken men they are often depicted ; and I would fain hope that, when some among us set aside the spectacles through which we are looking, and judge with our own eyes, our tenants will be found in every way as well off and as independent a class as any in Bengal. For my part I am convinced that, if any portion of this Bill is unsuited for Bengal, it is equally unsuited for my province. That the rents of whole estates have been unduly enhanced I admit, but that my province is rackrented as a province I deny. I deny also that there is any necessity for the severe restrictions to be placed on voluntary adjustment of rents under section 29, and in placing such restrictions on it we are acting contrary to the declared principles of the Bill.

“ Although I am strongly opposed to indiscriminate enhancement of rents, I am equally opposed to severe restrictions being placed on the landlord's right to enhance where enhancement is fairly due. I am still more opposed to unnecessary obstacles being placed in the way of a mutual adjustment of rents, or, for that matter, in the way of voluntary enhancement out of Court.

“ All such unnecessary restrictions only hamper the good men among us ; they will be evaded by the worldly-wise.

“ My Lord, three more gaps must be filled up before the restriction in this section will be effectual, and to stop these gaps some of the best portions of the Bill must be revised.

“ With reference to section 29, the Hon'ble Mr. Evans has shown the Council more clearly than I am able to do the difference between adjustment of rents and enhancement of rents. He has quoted the Malynuggur case as a case in point. If I understood him correctly, he submitted it in support of the planters' contention 'that an adjustment of rents should be allowed when one party to the agreement declines to continue to fulfil the conditions under which the tenancy was previously held.'

“ If I understand the case correctly, it was hardly a case to the point; was a case in which it suited one party to the agreement to set aside the conditions under which the tenancy was held, and the party who found it convenient to set aside the conditions of the tenancy claimed an enhancement of rents on the ground that he had cancelled a condition of the tenancy which he no longer found it convenient his tenants should fulfil.

“ As to the rights of the different parties under the present law I have no concern. I would only point out that this case in no way represents our claim : our claim is represented better under section 51, which says :

‘ If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.’

“ The practical effect of this will be that the Courts will find the conditions of a tenancy are equally binding on both parties, and that the person who sets aside the conditions without consent shall make good the other's loss by a re-adjustment. All we claim is that the party who finds it convenient to set aside the conditions of a tenancy shall not be placed in a position to retain all the advantages minus any onerous or compensating conditions.

“ Section 29 will have the mischievous effect attributed to it by the Hon'ble Mr. Evans; its effects could only be redeemed by the Government declaring that all suits for enhancement may be brought free of cost. This I deem to be impossible. Many urgent representations have been made in Committee and out of it to cheapen costs of suits.

1885.]

[Mr. Gibbon.]

“It has been recommended to reduce court-fees and to expedite the hearing of suits—both very necessary. At present we are put to great expense and needless loss of time by the delays in the hearing of our suits; our witnesses are obliged to travel long distances only to be sent back. The lessening of court-fees is not sufficient; it is necessary to reduce process-fees also.

“I do not know how many of the hon'ble members here present are aware that if I procure a decree against a tenant for arrears of rent, if his holding consists of ten pieces of land, he must pay an attachment fee of Rs. 2 for each piece and also a further fee of Rs. 2 on each piece as a fee on sale. Such fees are exorbitant, and they fall on the judgment-debtor. Unless such are remedied, the provision of the Bill which substitutes sale of holding for ejectment after decree will be cruel.

“For all sums under Rs. 100 the judgment-debtor has to refund 65 per cent. of the principal as costs of the plaintiff; he has to stand all his own costs plus sale-fees if the holding is sold.

“The changes the Bill will necessitate in our modes of transacting business are very great. Receipts must be kept in counterfoil, with severe penalties attached for neglect to deliver; agreements must be registered; all accounts must be kept in bound books; a suit for pattá and kabúliyat has been set aside and an application for a declaration of conditions under section 158 substituted; the landlord must no longer neglect to deliver a receipt; and other changes too numerous to mention have been made—all improvements in a way; but the penalties for omission and commission are so severe, so many opportunities will be afforded for worrying the landlords, that the Bill if hastily or harshly administered may be turned into an engine of oppression. It must be remembered that to carry out the instructions of the Bill in their entirety the habits of a lifetime must be discarded. In attempting to follow your rules we shall require all your sympathy—much forbearance. Throughout the discussion much stress has been laid upon the necessity of compelling the landlords to keep their accounts in bound books, much discredit has been cast upon their mode of keeping accounts, but no one has thought it necessary to enquire if it has even been made possible to do otherwise than as we now do. When we keep our accounts in bound books they are called for in evidence not only in our own cases but in the interests of others; our servants have to take them to Court half a dozen times before their evidence is taken; our books are detained in or out of Court for days together; some of my books are detained for months; we are at the mercy of our opponents and of the Courts.

“I will leave the Hon’ble Council to judge of what use such books are to us when returned.

“The remedy we must leave to others to provide. All I can say is that, as the accuracy of the landlords’ accounts will depend upon the punctuality with which they are written, it becomes a matter of the first importance that the present state of affairs be not allowed to continue; if it does, our second state will be worst than our first; the landlord will be compelled to keep two sets of books, one for himself and one for the Courts.

“Under the Bill a registered document is in many instances absolutely necessary; in all instances it will carry greater value than an unregistered one. The Hon’ble Mr. Evans has quoted the authority of the Board of Revenue to prove how difficult it is induce tenants to register. I myself am a strong advocate of registration; registration should be encouraged in every way possible, but it remains for the Government to make registration possible. The Select Committee has called the attention of the Government to the necessity of expediting and cheapening registration: at present registration is in some cases almost prohibitory, in some cases quite so; at present every tenant must waste at least 48 hours of his time besides having to travel long distances; documents are impounded or returned for the most trivial errors; and if such is the case when registration is the exception and not the rule, what will it be when registration is made compulsory? Under the Bill there is no enhancement of the rents of a bhaoli tenure, and rightly so; the initial rent will be the rent for all time to come; but under the law a bhaoli agreement cannot be registered; should a dispute arise as to the rate of the tenant’s rents, he must prove his right to hold under section 51 or pay at the rate others are paying. Another change is about to be made in the procedure, and I hope it will prove itself to be a beneficial one, but again all will depend upon the cost of the application.

“An application under section 158 to declare the terms and nature of a tenancy is to be substituted for the time-honoured but cumbersome practice of a suit for the interchange of documents. There is nothing in the Bill to prohibit their interchange; on the contrary, they are made necessary at every step, but they cannot be sued for. The change is a good one and practical, but it will take us some time to understand. If the cost is not made prohibitory, it should benefit both parties: as it is to be a simpler mode of proceeding I hope it will be a cheaper one. Under the Record-of-rights and Settlement chapter much good will, I hope, be effected; vast and exceptional powers are given to the

1885.]

[*Mr. Gibbon.*]

Government under it; but those powers, as they are intended to meet exceptional cases, we may, I think, trust the Government to exercise them only in cases of grave necessity. I believe this chapter, as it stood in the draft Bill, created more uneasiness, greater consternation, among the landlords than any other portion of the Bill. I hope when they fully realize the great changes that have been made in this chapter by the Select Committee they will be re-assured.

“Much as the Bill will do for the position of the raiyat in respect to the position he will stand in to his landlord, it does nothing for him with respect to his credit with his banker. It omits transferability from among the incidents attached to an occupancy-holding; on this point it leaves the law as it stands.

“I regret that the Government does not see its way to legalizing and controlling transfers of holdings. I do not now intend to re-open the question. I believe it would be a hopeless task to attempt to carry such an amendment to the Bill against the solid vote of the Government. I believe the measure will soon force itself on the attention of the Government, when they will have to review their present decision. By forcing on a discussion now I should weaken my case. I am strongly of opinion that legalized transferability of the whole holding is the only valid restriction that can be effectually put on the subdivision of holdings which is now going on all over the country, which the landlords are in some instances encouraging, in others are powerless to prevent.

“There is only one other subject that I would wish to refer to. I will then cease from monopolizing the time of this Hon'ble Council. I refer to the matter of contracts. A great outcry has been raised against the Government for prohibiting a tenant from contracting himself out of certain rights attached to a tenancy. Although it is to my interest as a trader to support free contract, in this matter I have voted with the majority of the Select Committee.

“Under the Contract Law a contract to be valid must be made with the free consent of parties, for a lawful consideration and for a lawful object.

“As well as I am able to remember, their representatives in or out of Council have never claimed a right to make a contract with their tenants for lawful consideration; all they have ever claimed is a right to induce their tenants to sign away acquired rights under the shadow of a renewal of leases, or to debar them from acquiring prescriptive rights in the future. With reference to the other important and equally weighty matters contained in the Bill, such as prevailing rates, under-raiyats, non-occupancy-raiyats, settled raiyats, presumptions,

[*Mr. Gibbon; The Lieutenant-Governor.*] [2ND MARCH,

proprietors' zirát land, merger, &c., and with reference to the gross-produce limit which has been omitted from among its provisions, I will reserve what I have to say until the specific amendments come under the discussion of Your Excellency's Council.

“ Before I cease, I would refer to a remark which fell from the Hon'ble Mr. Goodrich, that no provision has been made for the acquisition of land for charitable purposes. I think, if, the Bill is seen to, it will be found that section 84 provides for this; but I am sorry the majority of the Committee did not see their way to adopting my suggestion to include the acquisition of land for irrigation-purposes in the section. If it is possible to acquire land for the one purpose, it is possible to acquire it for the other.”

His Honour THE LIEUTENANT-GOVERNOR said :—“ My Lord, I do not think I should have attempted to say anything at the present stage of the discussion had it not been that I have been referred to by very many speakers who have preceded me. We have had very appropriately an exhaustive statement from the hon'ble member in charge of the Bill, who has given us a full history of the proceedings since this Bill was last before the Council. We have had speeches also from most of the members of the Council—certainly from all on the Select Committee—dealing at length with the details and principles of the measure; and in these speeches we have had laid bare, at least I trust so, the thoughts and intents of the heart of each speaker as to the main issues with which we shall have to deal in the further consideration of the Bill. I think I shall best consult the wishes of my hon'ble colleagues in Council, and certainly my own convenience, if I limit what remarks I have to make upon the present occasion to the practical issues which have been raised by the speech of the Hon'ble the Mahárájá of Durbhunga, and by the speech of my hon'ble friend to the left who ably represents the British Indian Association and the zamíndárs of Bengal. All or most of the other points to which allusion has been made in the course of this debate will arise on a consideration of the various amendments which are upon the notice paper; and for myself I would prefer to deal with these in detail as they arise rather than by the running commentary of a general statement.

“ Now the definite questions which are immediately before the Council, are contained in the addresses of the Hon'ble the Mahárájá of Durbhunga and the Hon'ble Bábú Peári Mohan Mukerji. The Mahárájá says the Bill should be abandoned because it is a bad one; and the latter contends that the Bill has been imperfectly and insufficiently considered, and that there-

1885.]

[*The Lieutenant-Governor.*]

fore it should be postponed for re-publication. Anticipating the formal notice which stands in his name on the paper, he wishes that the postponement should be for three months, but we are all aware that that practically means a postponement for nine months or one year.

“The Mahárájá condemns the Bill, because, to use his own words, it was ‘discredited and disowned by the Select Committee’ on account of their want of unanimity as shown by the many dissents; and secondly, that the zamíndárs and raiyats are not agreed in regard to it; and lastly, that it is, of course, a gross breach of the solemn promises made by the Government in the Permanent Settlement. Now I do not think that the absence of union in the views of the Select Committee need distress the Mahárájá so much as it appears to do. We are dealing here with a very large measure; indeed, we may say that no larger measure has been under the consideration of the Government since the days of the Permanent Settlement. It is a measure also involving very deep and abstruse questions—questions which go back to a period even before the time of the Permanent Settlement; and it is complicated with innumerable details in all the relations between the landlord and tenant. It seems to me, having regard to the character of the legislation contemplated, impossible to have expected that union and unanimity in the opinions of the Committee which the Mahárájá so strongly desires. For, if we look at the composition of that Committee, we see at once what a variety of different local experience and interests they represent.” You have the representatives of landlords of both sections of this great province of Bengal, of the landlords who have and own property both in Bengal Proper and in Behar, the circumstances and conditions of which vary in many important particulars. Then you have the hon’ble member from the North-Western Provinces, who brings to the consideration of the problem a very practical knowledge of the land system which exists in those provinces. We have also traditions of the Board of Revenue influentially represented by the Hon’ble Mr. Reynolds; the statistical research and information which have affected so many of our decisions in the person of Dr. Hunter; and the special usages and customs in which the Muhammadan community are interested; and lastly, not least, the influential opinion and support which my hon’ble friend Mr. Gibbon has brought to bear upon the whole subject, speaking in the interests of European planters, and as himself the manager of extensive landed properties.

“Having regard, then, to the constitution of the Committee, and to the well-known and admitted fact that there are wide differences in the circum-

stances of different parts of the province, the demands for a complete unanimity in the Report seem to me unreasonable.

“ Then, as to the dissents themselves, I think an examination of them will tend to show that there is no such force in the expression of their differences as is sought to be attributed to them. I will take my own first, though I do not put it forward from any idea of its special importance, nor from any sense of its claim to priority having regard to my position as the head of this Administration. But it will perhaps best illustrate what I mean. The nature of my objection is that there are certain matters, such as the abolition of the ‘prevailing rate’ as a ground of enhancement, the adoption of a gross-produce limit of rent, and some plan for the better security of the non-occupancy-raiyat, which, if included in the Bill, would have greatly improved it. The majority of the Select Committee thought otherwise; but this is no reason why I should reject the Bill as it is submitted to the Council. I think there is a great deal in the Bill as it comes before us which is in advance of the legislation of 1859. There have been considerable improvements in many respects which I gladly accept. If I cannot have my own way in everything, still I am not going to reject what the Bill contains because I cannot have my own way altogether. I take it that this is very much the view of Mr. Reynolds, who regards the Bill as an instalment of a more complete measure. So, if regard is had to the dissents of the Hon’ble Members Mr. Hunter and Mr. Amír Alí and Mr. Gibbon, though they severally raise points of considerable importance, I think you will find that they are more or less upon matters of detail, which will be fully dealt with under the amendments to be considered in Council; but whether they were rejected or accepted, they are not of that vital character which would justify us now in endorsing the Maharájá’s recommendation to abandon the Bill. Of course, I am aware from the dissents of the two hon’ble Native members that they go to a greater length than the others, and will concede to no compromise. They seem now to say ‘We do not want a Bill of this kind at all; we live under the best possible of all Governments, and we have the best possible of all rent laws, and we do not want any modification of them. We very much prefer the existing state of things to any change which goes in the direction of this Bill.’ This seems to me the attitude of the zamíndárs represented by the two hon’ble members at the present moment; but after ten years of labour devoted to the subject, and the general agreement to which the majority of the Select Committee have come in favour of the kind of legislation which the Bill contains, any idea of abandonment seems out of the question. I think it will be clear to any one who will take the pains to analyse the several dissents, that, with the exception of the zamíndári members

1885.]

[*The Lieutenant-Governor.*]

who stand out, notwithstanding the numerous concessions which have been made to their views, for an absolute concession to all their claims, that, admitting a variety of opinion upon particular points (and they chiefly refer to points expunged from the Bill in deference to the views of the majority of the Committee, and the removal of which should rather conciliate the extreme section on the side of the zamíndárs), there is a general concurrence in favour of the Bill; that it is considered to be a great improvement upon the Bill which was presented to the Council last year; and that they are quite willing to accept it, though it does not contain all that they wanted.

“I would now allude to the argument of the Mahárájá of Durbhunga that the zamíndárs and raiyats do not agree upon the matter. He says that the Bill neither satisfies the zamíndár nor the raiyat; and he implies rather than declares that an absolute Government and a packed Council were forcing an obnoxious piece of legislation upon all the landed classes in Bengal. Evidently what the Mahárájá wishes us to infer is that the zamíndár and the raiyat are at one in the matter and want one and the same Bill. Nothing, however, can be more certain than the fact that the zamíndárs look upon the Bill from one extreme, and the raiyats from the opposite extreme; and there can be no doubt that, if the Government had to wait till the raiyat and the zamíndár were agreed in a common view upon the character of the legislation upon such a wide subject, we should have to wait for that prophetic period when the lion and the lamb shall lie down together, and the millennium shall have dawned in which it may be hoped that there will be no need for legislators nor land bills. Will not the Mahárájá accept the fact that where the zamíndárs assert an extreme position on one side and the raiyats on the other to such an extent that I have, within the last few hours, received telegrams from a large body of them urging me to sign no Bill which will not grant their full demands, the only right way is to accept as a settlement that which has been adopted upon the recommendations of the majority of the Select Committee? For my own part I am prepared to surrender my predilections in deference to the results of the Committee's deliberations and decisions, in respectful submission to the views of the Government of India, who, it seems to me, must by necessity be the final arbiter of the questions which arise in a matter involving such large issues, and especially in consideration of the position of the eminent statesman, His Excellency the present Viceroy, upon whom has devolved, within a few weeks of his assumption of the administration of this great Empire, the very difficult task of disposing of a question of such magnitude.

“I must now refer to the contention of the hon’ble member who has urged that the Bill has been insufficiently considered, and who in support of that contention has brought forward arguments which I think we have often heard before; and I have little doubt that, if we yielded to his wish for a postponement, we should have just as great difficulties a year hence in reconciling the interests and claims of differing sections as we have had in the past and as we have at the present moment. The truth is that the hon’ble member wants to impose upon us the labours of Sisyphus. We have no sooner rolled the heavy block to the top of the hill than we are asked to roll it down again; only in our case, unlike that of the unfortunate king upon whom this penalty was inflicted, each year adds to the weight of the burden and enhances the difficulty of the task. The request of the hon’ble member cannot be justified; certainly not on the ground of insufficient consideration. Upon this point I don’t know that I can add anything to the force of the statements made by the hon’ble member in charge of the Bill, who has shown that this Bill has undergone longer and more thorough consideration than any measure of the kind which has ever been placed before the Council. If any one doubts this, I would refer him to the first thirty-five paragraphs of a despatch which the Government of India sent home on the 21st March, 1882, to the Secretary of State. Although that paper is now only three years old, it is an almost forgotten part of the extensive literature of the Bill; but if any one wishes to learn the facts he will find in the passages to which I have referred a full history of the origin and progress of the measure. The fact is that very soon after the law of 1859 was passed it devolved on the administration of Sir William Muir, who was then Lieutenant-Governor of the North-Western Provinces, to recommend an amendment of it. It has since then been before four successive Lieutenant-Governors of these Provinces, and that represents a considerable period of time, perhaps not less than 15 years. Sir George Campbell especially took up the matter with the view of checking the illegal exactions going on in Orissa and the very serious complaints of oppression in Behar. Sir Richard Temple had to deal with grave agrarian riots in Central and Eastern Bengal; so serious were they that an Act of the legislature was passed to control and suppress them, and to prevent their recurrence in future. From that time excitement on the subject became so intensified that Sir Ashley Eden had to appoint two Commissions to consider the whole subject of the revision of the law of landlord and tenant. The Bill submitted by the united Rent Commission of both Bengal and Behar was subjected to further revision by the Hon’ble Mr. Reynolds in

1885.]

[*The Lieutenant-Governor.*]

conference with different local authorities, and the Bengal Government under Sir Ashley Eden eventually submitted their proposals to the Government of India. I can speak with personal knowledge when I say that these proposals underwent a detailed and thorough criticism at the hands of His Excellency the late Viceroy in Council, whose final conclusions were forwarded to the Secretary of State in a historical despatch of March, 1882. Those who contend that this Bill has not had the same time and care bestowed upon it as the Penal Code and the Permanent Settlement Regulations are quite mistaken. It may be the case that the Penal Code was under consideration for many years before it was passed, but it should be remembered that after its first introduction it was left in abeyance for a long period, and moreover the codification of the criminal law was a new subject in this country; while, as regards the Permanent Settlement, the period during which it was under enquiry was, I believe, not nearly so long as the time which has been given to this Bill. It is clear from the records of the day that Lord Cornwallis intended at first to make a decennial settlement as an experimental measure on which a permanent settlement might be based; but so impatient was he to secure the enactment of the measure before his period of office expired, that he passed it before even the assent of the Court of Directors had been obtained to his proposals; so that what was intended in the first instance to be only a decennial settlement came into operation as a permanent settlement. I am, however, attacked by the hon'ble member (Bábú Peári Mohan Mukerji) as to what took place in my own Council with regard to a Bill for the appointment of kanungos and patwáris, in the course of the discussion upon which I expressed the opinion that great darkness prevailed with regard to all the relations of landlords and tenants; and he asks with reference to this, how can I press forward a Bill of this character, while I plead the existence of such gross general ignorance upon all material facts bearing upon the subject? I need not enter here into a discussion of the merits of that Bill. It is acknowledged to be a measure subsidiary to this Bill. If the chapter in this Bill which relates to the survey and record of rights falls through, the Patwáris Bill in the Bengal Council will not be proceeded with. But it must be obvious to every one that if a cadastral survey and preparation of a record of rights is to form a material part of the present legislation,—and I would sooner abandon many parts of the Bill than that,—there must be some recognised agency to record the changes which take place from time to time, or else the results of that survey and record will be thrown away in a few months. Now, when I complain of the darkness and ignorance which prevail as to the relations between landlords and tenants, I

allude to those kinds of facts of which no one has given us a more direct and practical illustration than the hon'ble member himself. The members of the Select Committee will remember that when we were dealing with some questions as to providing a form of receipts for rent in connection with this Bill—a form which was to show the name of the tenant, the quantity of land he held, and possibly the boundaries of it, the rent he paid, and simple details of that nature—the hon'ble member opposed the proposal on the ground that not one zamíndár in a hundred would be able to give such information. I say that if the zamíndárs do not know the names of their tenants, and the land they hold, and what rent they pay, we are in grosser darkness than I could have conceived possible. Now a survey and record of rights would give authoritative information on all such points as these. But the possession or non-possession of that knowledge certainly does not affect the merits of a measure like this, whose primary object is to declare and establish the rights of tenants in their relations to the zamíndár, and to try and secure to them greater fixity of tenure, and to afford them some protection against continuous and unlimited enhancements. The issue here which the hon'ble member raises, and which he has a perfect right to raise, is that the Government has no business to attempt any such thing; but the right or wrong of Government intervention depends altogether on the interpretation of the Regulations on which the Permanent Settlement was framed. We all know that there is a great deal of difference in opinion regarding that important settlement. The zamíndárs contend that in dealing with this Bill as we are doing we are depriving them of those rights which were guaranteed to them by the British Government in the beginning of this century; and the argument is used that, as the claim of the zamíndár to do just as he likes with his own is indefeasible, they will accept nothing else and nothing less. I never could admit the validity of such a plea. The contention is a very one-sided view of the Permanent Settlement, for I think that, if you examine Regulations I to VIII of 1793, you will find that there is nowhere throughout them anything more in the way of a promise than the single promise that the public demand on the land should be limited in perpetuity. The reasons for adopting that principle we know, because they are recorded in the Regulations. That promise, notwithstanding grievous provocations, has been kept for all these 90 years, and it will remain inviolate. But I assert most strongly that to urge that the whole Permanent Settlement was passed in the interests of the zamíndárs is a very one-sided aspect of the case. For, apart from the very strong reservation which the Government recorded at the time that it would, whenever it thought fit, legislate for the protection of the

1885.]

[*The Lieutenant-Governor.*]

cultivator, we have express mention in those Regulations of the positive rights of the raiyats. It may be true, as the hon'ble and learned member (Mr. Evans) said the other day, that the settlement of rents between the raiyats and zamíndárs was, in 1793, a matter to some extent of contract. But two things in this connection have to be borne in mind—that the competition in those days was for raiyats to clear and cultivate the land, and the zamíndárs naturally had a motive for leniency; and secondly, there was, as found in the Regulations, the absolute barrier against undue exactions of the parganá rate which was known and respected in every district.

“ I know that the zamíndárs in dealing with interpretations regarding the Permanent Settlement are very unwilling that any reference should be made to contemporary history. They have openly said so in a public document. For my own part I do not see how we can avoid a reference to contemporary opinion when we have to interpret an important Act like the one under notice; and we are justified in looking to what eminent men of the time said on this point. There is valuable evidence on the subject scattered among the pages of contemporary writings, and I will read to the Council some extracts bearing upon the issue to which I have referred :—

‘ Sir Philip Francis, in a Minute written in 1776, considered that the rate of assessment per bighá should be fixed for ever upon the land, no matter who might be the occupant.

‘ Warren Hastings wrote in the same strain on 1st November 1776—“ Many other points of enquiry will also be useful to secure to the raiyats the permanent and undisputed possession of their lands, and to guard them against arbitrary exactions,”—the term “ exactions ” from raiyats signifying in that day the levy of more than the established parganá rate of rent.

‘ Sir John Shore, in the same spirit, was not content that the Permanent Settlement should be with the zamíndár alone; he observed: “ And at present we must give every possible security to the raiyats as well as, or not merely, to the zamíndár. This is so essential a point that it ought not to be conceded to any plan.” The Court of Directors on 19th September, 1792, approving of these views, recognised it as an object of the Perpetual Settlement that it should secure to the great body of the raiyats the same equity and certainty as to the amount of their rents, and the same undisturbed enjoyment of the fruits of their industry, which we mean to give to the zamíndárs themselves. Twenty-seven years later, the Court, on 15th January, 1819, deliberately re-affirmed :—“ We fully subscribe to the truth of Mr. Sisson’s declaration that the faith of the State is to the full as solemnly pledged to uphold the cultivator of the soil in the unmolested enjoyment of his long-established rights, as it is to maintain the zamíndár in the possession of his estate, or to abstain from increasing the public revenue permanently assessed upon him.” ’

“ Nothing, it seems to me, could be more conclusive of the privileges and position of the raiyats than these statements. They indicate at least the intentions of those in authority when the Permanent Settlement was made, and it

was a misfortune for the country that they were not carried out at the time. The agitation which has been going on now for several years brings the case to a climax, and demands a final settlement on the lines of this Bill. I shall certainly support the motion that the Bill be taken into consideration, and shall oppose most strongly any motion for postponement. I am quite certain that we incur a risk in putting off the final settlement of this question; and I trust the zamíndárs will understand that it is the settled policy of the Government that the right of the raiyat to hold his land is as clear and undisputable so long as he pays a fair and reasonable rent, as is the right of the zamíndár to hold his estate so long as he pays his revenue."

The Hon'ble MR. ILBERT said :—

"MY LORD,—I do not propose at this stage of the debate to discuss point by point the objections which have been brought against the particular provisions of this measure. But there are two criticisms of a general character about which I should like to make some remarks, and I shall have a few words to say on the question of urgency, which, though it is raised more directly by the motion which stands in the name of my hon'ble friend Bábu Peári Mohan Mukerji, has been discussed in connection with the motion now technically before the Council. Of the two criticisms to which I have referred, one is that the Bill has been so changed by the Select Committee as to have lost its fundamental characteristics, and the other is that the Bill as now revised does not possess those qualities of completeness and finality which are essential to good legislation.

"I do not wish to minimize or underrate the importance of the changes which this measure has undergone, not merely since the date of its first preparation by the Rent Commission, but since the date of its introduction into this Council; but I do undertake to say that those changes are fully explained and justified by the circumstances under which the Bill was prepared and introduced, and by the nature of the subject-matter with which it deals, and that they do not in any way warrant the charge that the Bill in its present form involves a departure from the principles on which it was originally based, or that the Select Committee have lost sight of or abandoned the objects which the Government of India had in view.

"This Bill, as we all know, took its origin in a draft which was framed by the Bengal Rent Commission. Now, what was the nature and scope of the task which the Rent Commission undertook? It was a task of no ordinary mag-

1885.]

[*Mr. Ilbert.*]

nitude. It was a task singularly arduous, ambitious and comprehensive. They undertook to frame a law of landlord and tenant which should be applicable to the whole of Bengal and Behar, with certain exceptions. They proposed to make important alterations in that law. They undertook, in so doing, not merely to amend the existing Acts and Regulations, but to repeal them and to re-enact them in a consolidated form with the necessary modifications. And last, but not least, they proposed to codify the whole of the judge-made law on the relations of landlord and tenant in the Lower Provinces. In short they undertook, at one and the same time, to amend, to consolidate and to codify. Now, in dealing with so difficult and delicate a subject as the law of landlord and tenant an ordinary legislator thinks himself fortunate if he achieves with some degree of success any one of these three objects: that he should be able to achieve them all is more than any mortal is entitled to expect. Accordingly, when the Government of India came to consider from the point of view of practical legislation the Bill submitted to them by the Bengal Government,—which was in fact the Rent Commission Bill with sundry modifications,—one of the first conclusions at which they arrived was that it would be desirable to drop so much of it as merely codified existing law, and to leave the measure one of amendment and consolidation. I will not trouble you at length with the reasons which led me among others to this conclusion—a conclusion about the soundness of which I have never had any doubt. They were reasons which did not involve the slightest disparagement of the admirable work which had been done by the learned author of the Digest of the Law of Landlord and Tenant in Bengal, and did not imply any scepticism as to the value of codification, or as to the importance of continuing the great work which has been commenced for India by the framers of our codifying Acts. Shortly stated, the reasons were these. Apart from any doubt which we might feel as to the expediency or possibility of attempting to present in a code the effect of judicial decisions on subordinate rules or propositions of law, it was clear that up to this time the process of codification had only been applied with success to those portions of the English common law which are suitable to the circumstances of India; the general principles of the English law of landlord and tenant had quite recently been codified by my learned predecessor Mr. Whitley Stokes in that chapter of the Transfer of Property Act which relates to leases; and the legislature on passing that measure into law had expressly declared that this chapter—the chapter relating to leases—is not suitable to the relations which exist between landlord and tenant in the Mufassal. Furthermore, we held that, even if the law with which we had to deal admitted of codification, it was of

the first importance to simplify and reduce in bulk as much as possible the long and complicated measure which had been laid before us by the Government of Bengal. Accordingly, as I have said, the merely codifying portions of the Bill were dropped, and, as I hold, wisely dropped; but the mere fact that this measure once professed to be a Code has given it an appearance of completeness and finality which was always illusory, and which has had an unfortunate effect.

“ Even in its reduced form the Bill was sufficiently long and complicated, and was in a shape—I am speaking merely of form and not of substance—was in a shape which would have made an English Minister reluctant to submit it to Parliament. For it is a received maxim of English legislation that when you have important changes to make in the law—changes which are likely to encounter much opposition or to invite much discussion—you should not attempt to combine the two processes of amendment and consolidation, because by so doing you divert the attention of Parliament and the public from the real issues before them. You raise questions which have been already settled or are of minor importance, and you thus materially impede and embarrass the passage of the measure through the House.

“ In this country, where the machinery of legislation works more easily and smoothly, it has always been held—whether it will continue to be so held if we have many more such notice-papers as that which has been laid on the table with reference to this Bill I cannot say; but at all events it has always been held—up to this time that the advantages to the public of consolidation outweigh what may be called the tactical disadvantages of presenting a too widely extended front for opposition and criticism; and accordingly we have, as a general rule, whenever we have had to make extensive changes in the law, applied the process of repeal and re-enactment. The Government of India did not think that they would be justified in the present instance in departing from this practice, but at the same time I am bound to confess that in the course of the discussion of this measure I have found abundant reason for appreciating the practical wisdom of the English rule. For there can be no doubt that the form in which this Bill has come before the public has tended to obscure the main issues which are raised by the present legislation, and has roused many of those ghosts of buried controversies which still hover and shriek round the Permanent Settlement Regulations and Act X of 1859. Let us endeavour to abstract our minds from those arts of the Bill which merely reproduce existing law, and those parts which embody miscellaneous amendments of minor importance, and consider what were the main defects in the existing law which the Rent

1885.]

[*Mr. Ilbert.*]

Commission proposed to remedy, and what were the main remedies which they proposed to apply for the removal of these defects. The main defects were two: first, that the existing law gave, or appeared to give, to the raiyat rights which he could not prove; and secondly, that the law gave, or professed to give, to the zamíndár remedies which he could not enforce. Whether by reason of any deliberate policy of shifting tenants' holdings, or by reason of local customs of cultivation, or by reason of the absence of proper landmarks, but at all events in fact the raiyat was unable to prove that kind of twelve years' occupation which was necessary to give him occupancy-rights under Act X of 1859. And the zamíndárs found the process of recovering their rents through the Courts tedious, and the process of enhancement through the Courts unworkable. Want of adequate legal security for the raiyat, want of adequate legal facilities for the landlord—those were two substantial defects which were made the subject of repeated complaints before the Commission. And at the same time that the Rent Commission admitted that there were in the existing law these defects, which impaired its efficiency as a law and prevented it from achieving the objects which it was intended and expected to achieve, the Famine Commission, looking at the subject from a somewhat different point of view, came to much the same conclusion with respect to one of these defects, and pointed out that the absence of adequate legal security for the tenant had produced and was producing disastrous economical effects.

“These, then, were the practical problems which the Rent Commission—sitting, not as codifiers or as consolidators, but as amenders of the law—had to solve:—whether they could devise in the interest of the tenants more effectual checks against liability to capricious eviction and excessive rackrenting; whether they could devise in the interest of the landlords, more effectual facilities for the ascertainment and recovery of their just dues. Reasonable security for the tenant, reasonable facilities for the landlord—these were the two things which they had to endeavour to provide. Suggestions for attaining these objects poured in upon them in great abundance, and from very different quarters. It was their duty to consider these suggestions; to sift them carefully; to view them in the light of different interests and different experiences; to recommend them for adoption if they appeared to be reasonable and practicable; to reject them if they appeared to be unreasonable or impracticable. And that, Sir, is the history of this measure from its first inception to the present time. The process which has been continuously applied to it has been a careful sifting of numerous suggestions which have been put forward

with the view of meeting certain specific evils. The Government of Bengal took up the suggestions of the Rent Commission, made them the subject of a very careful examination, and then transmitted them with modifications to the Government of India. The Government of India examined with equal care the suggestions laid before them by the Government of Bengal, and, with the approval of the Secretary of State, embodied in the Bill which was introduced into this Council such of them as appeared to afford a reasonable prospect of working with success. That in the course of this process the measure should have undergone considerable modification is no matter for surprise, but at the same time is no ground of blame to the Rent Commission, no cause for imputation against the Government of India or the Select Committee of this Council. The Rent Commission would have been much to blame if, in the exercise of the duties imposed upon them, they had rejected any suggestion which appeared on the face of it to be reasonable: the Government of India would have been equally to blame if they had not incorporated in their original Bill such of the proposals laid before them, as, with the information then at their disposal, seemed to offer a fair prospect of meeting the requirements of the case; the Select Committee would have been still more to blame if they had obstinately stuck to these proposals, or had adopted any alternative suggestions which might be subsequently made by the Bengal Government, after further inquiry and examination had thrown grave doubts on their fairness or feasibility.

“ There is another circumstance which has not a little obscured the real nature of the changes which have from time to time been made. In the course of the discussions which take place on a measure of this nature, ranging as it does over a considerable ground, and affecting a great variety and number of interests, it always happens that some particular proposal assumes a factitious importance, and comes to be described, in varying metaphors, as the keystone or core or kernel of the Bill. I always distrust these phrases. They usually mean that some particular feature of a measure has happened to strike the imagination of some particular writer or set of writers, to coincide specially with his or their sympathies or prepossessions, or to assume exceptional prominence from some one point of view, and when it disappears or assumes a less prominent position a cry is raised that the measure is irretrievably ruined, and that it is no longer of any value.

“ There have been a good many keystones and cores and kernels of the Rent Bill. There was a time, in the earlier discussions of this measure, when the

1885.]

[*Mr. Ilbert.*]

proposal most in vogue was a proposal which not unnaturally found favour in zamíndári quarters, a proposal to devise some kind of summary procedure for the recovery of rents. This was to be the be-all and end-all of legislation on the subject of landlord and tenant. 'Give us back our Huftum and our PUNCHUM,' said the zamíndárs, 'and all will be well. Or, at all events, if you cannot do that, put the raiyat who is sued for rent in the same position as if he had signed a bill of exchange, that is to say, had agreed in writing to pay a specified sum of money to a specified person at a specified time.' This was a form of 'facility' which was much discussed by the Rent Commission, and the conclusion to which they came about it was substantially the same as that which was subsequently arrived at by the Government of India. I spoke at such length on this topic in obtaining leave to introduce the Bill that I may be pardoned for not dwelling on it at any length on the present occasion. The conclusions to which we came were in short these; not that the difficulties complained of by the landlords were non-existent, but that the remedies suggested were superficial; that where the rights involved are obscure and uncertain, and the facts difficult to ascertain, no mere tinkering of procedure would provide a method of judicial determination which should be at once speedy and just. But at the same time I expressed a hope that when the measure came to be fully discussed other expedients for simplifying the procedure might be devised. In the course of the long discussions which have since taken place sundry suggestions for that purpose have been made; some of these were brought before the Select Committee by my lamented friend the late Rai Kristodás Pál; others have been embodied in a paper written by Bábú, Mohini Mohan Roy, who was himself a Member of the Rent Commission; others again have been communicated to me privately by my friend the Mahárájá Sir Jotindra Mohan Tagore. The Select Committee have not overlooked or disregarded any of these suggestions. On the contrary, they have given them their most careful attention. We invited judicial officers to examine them and express their opinions upon them, and we specially referred them for the consideration and opinion of the Calcutta High Court. But the replies which we have received have been unfavourable to these suggestions. We have been told, and told on the highest authority, that they could not be adopted without serious risk of failure of justice. Under these circumstances it was impossible for us to endorse recommendations which had by the authority most competent to express an opinion upon them—I mean the Judges of the Calcutta High Court—been unanimously and decisively condemned. It would have been a satisfaction to the

Members of the Select Committee, as it would have been a satisfaction to the Hon'ble Judges, if we had been able to accept any of the suggestions put forward for the simplification of procedure and the removal of the means too often employed by raiyats to harass their zamíndárs. But in the face of such strong and authoritative expressions of opinion that these suggestions were dangerous or impracticable, we could not take upon ourselves the responsibility of recommending their adoption. Some minor amendments of procedure we have indeed proposed, and I believe that they will be found useful as far as they go. But I fully agree with the deliberate opinion of the Rent Commission and of the High Court that it is in other quarters than the amendment of procedure that the true remedy for difficulties in the realization of rents is to be found. Some of these remedies can, as the Judges point out, be provided by executive action; means of providing others are supplied by this Bill; and it is to the machinery that we propose to provide for the ascertainment and recording of obscure and disputed facts and rights that the zamíndárs, if they are properly advised, should, I believe, look for a removal of the difficulties which they now experience in enforcing their rights.

“On this point, then, the views of the Select Committee are in complete accordance with those of the Rent Commission and with those which the Government of India entertained and expressed on the introduction of this Bill.

“But with respect to other matters I freely admit that, in the course of the deliberations which have taken place on this measure, the Select Committee have found themselves compelled to drop certain proposals to which at one time considerable importance was attached by their authors, and from which considerable advantages were expected to accrue. Take, for instance, the proposals as to the preparation of tables of rates. These proposals formed a very prominent feature of the Bill which was submitted to the Government of India by the Bengal Government, and they were incorporated by the Government of India in their original Bill, though not without expressions of great doubt as to their feasibility. There was a great deal to be said for these proposals, and, if they had proved capable of being carried out, they would have simplified many questions and removed many difficulties. Therefore, I think the Government was fully justified in inserting them in the Bill which was laid before this Council two years ago, and that they were entitled to a fair trial before being rejected as unworkable. The Bengal

1885.]

, [Mr. Ilbert.]

Government did give them a fair trial; they deputed special officers to try and prepare tables of rates on the lines indicated in the Bill; and the result of their inquiries and experiments was to satisfy both the Bengal Government and the Select Committee that the expectations once based on this particular scheme were not likely to be realized. Very similar has been the fate of the gross-produce limit. This particular proposal did not, if my memory serves me rightly, figure very largely in the earlier discussions on this measure; it was adopted by the Rent Commission, but without, as it appears to me, any adequate examination or consideration of the difficulties by which it was attended; it formed also part of the proposals embodied in the Bill introduced by the Government of India; but whilst I do find in the papers and speeches relating to the Bill indications of doubt as to the possibility of imposing any such general limit, or as to the propriety of the particular limit proposed, I do not find anything to show that it was regarded two years ago as being an essential feature of the measure. It was not until a comparatively late epoch that it attained the dignity of being described as the 'core' of the Rent Bill. Now, it must be admitted that it would be eminently satisfactory if we could devise some form of ultimate barrier against which the waves of rackrenting should ineffectually dash; and when the subject was discussed in the Select Committee—and it underwent a very full and thorough discussion before the Committee—there was a strong feeling on the part of the majority of the members in favour of imposing such a limit, if only a fair and workable limit could be devised. But when we proceeded to examine the facts and figures on which the particular fractional limit proposed in the Bill was based, we considered them insufficient to warrant the inferences drawn from them, and at the same time we were informed by the Bengal Government that to fix the limit at any other fraction would be to provide an ineffectual protection against that form of rackrenting which it was the object of the limit to counteract. Under these circumstances we reluctantly came to the conclusion that this was a form of check which we were not in a position to impose.

“Take, again, those provisions of the Bill which have been the subject of more and hotter controversy than, perhaps, any other of its provisions. I mean those which relate to the transferability of the occupancy-right. The object of the Rent Commission, the object of the Bengal Government in the earlier drafts of the Bill, the object of the Government of India in the Bill of two years ago, was to recognize and legalize a practice which, whether for good or for evil, either had grown up or was fast growing up in all parts of these Provinces, but to surround it with such checks and limitations as might be con-

sidered necessary or advisable for the purpose of preventing it from being used to the detriment either of the zamíndár or of the raiyat. That, I repeat, was the object which we all had in view: we wished to recognize and confirm existing customs, to give them the express sanction of the law, but at the same time to give them a reasonable shape. We found, however, that the existing customs were so multiform that it would be impossible to devise any one general form of legal check on the right of alienation which might not reasonably be charged with causing hardship to the zamíndár in one part of the country, and hardship to the raiyat in another; and, this being so, the conclusion at which the majority of the Committee, after many intermediate experiments and suggestions, ultimately arrived was that, if varieties of custom were to be recognized at all, they had better be recognized in their entirety, and that the balance of advantages was in favour of leaving the custom, at all events for the present, unregulated by any express provision of law. In arriving at this conclusion individual members of the Committee, as would naturally be the case, reached the same goal by different paths. The question was an eminently arguable one, and was one as to which both the advocates of the zamíndárs and the advocates of the raiyat were much divided in their views,—I know for instance that the view taken of it by my hon'ble friend the Mahárájá of Durbhunga differed materially from that taken by my hon'ble friend Bábú Peári Mohan Mukerji,—and it had to be determined with reference not only to the consideration whether the right of transfer was in itself a good thing or a bad thing, but with reference also to such considerations as whether the advantages of having a positive and definite but inelastic rule outweighed the disadvantages incidental to an elastic but uncertain custom, whether the mahájan purchaser of whom so much has been heard was a reality or a bugbear, and last, but not least, whether any discouragement which might be imposed on the practice of sale would not operate as an encouragement of the practice of sub-letting. It was under the influence of all these different considerations that we came to the conclusion that with regard to this particular matter the natural check imposed by custom and usage would probably operate better than any artificial checks which could, under existing circumstances, be imposed by law, and that the safer and more prudent course would be to abstain, at all events for the present, from positive legislation.

“There is no foundation for the suggestion that such a change as this involves a radical departure from the principles of the original Bill. Nor is there any foundation for the suggestion that we have by any of the provisions of the Bill as now revised violated any pledges which we gave on the introduction of this measure. We have been told that the power given

1885.]

[*Mr. Ilbert.*]

to reduce rents in cases where a special settlement is made is inconsistent with the assurance that was given that there would be no reduction of existing rents. Now it is important to be accurate about what was actually said and written with reference to this point. On looking at our despatch of 17th October, 1882 (paragraph 17), I find that we explained our intention to be that a raiyat should not be at liberty to sue for a reduction of rent on the *sole* ground that it exceeds that indicated by the table of rates. The assurance was that rents were not to be reduced solely on the ground of their being above those shewn in the table of rates, and I need hardly point out that the Bill contains no provision inconsistent with this assurance.

“In my own speech on obtaining leave to introduce the Bill I referred specially to this point. What I said was this :—

‘On a comparison of the provisions for enhancement with the provisions for reduction, it might be said that they have a somewhat one-sided appearance. The landlord can use the table of rates for the purpose of levelling up; the tenant cannot use it for the purpose of levelling down. But it must be remembered that the principle on which the Bill is framed is to proceed as far as practicable on the basis of existing rents, and that nothing is further from our intention than to bring about a general reduction of rents. Whether under exceptional circumstances and in special areas—such, for instance, as the area in Behar, where we learn from recent reports that the average rates all round have been enhanced by 500 per cent. in the last 43 years, whilst the area under cultivation has actually decreased, and the rise in prices during the same period has been at most 73 per cent.—it may not be necessary to take steps, if not for a reduction, at least for a re-adjustment of the rates of rent, is a separate and difficult question on which I will not enter now. But I repeat that proposals for a general reduction of rents form no part of the Bill.’

“I fail to discover in the Bill as now amended anything which is in the slightest degree inconsistent with any of the statements which I have just quoted. What we intend by the section to which reference has been made is that in very special and exceptional cases special and exceptional powers should be exercised.

“My Lord, I will not go through the other changes which have been made in this Bill since its introduction. The changes themselves, and the reasons for making them, have been fully and completely explained by my hon’ble friend Sir Steuart Bayley, and I have nothing to add to his exposition. I have listened sympathetically to the expressions of regret which have fallen from the lips of several hon’ble members for some of those changes; but I have heard nothing which has satisfied me that the grounds on which

they were made were not good and sufficient, or that the arguments which have weighed with the majority of us in the Select Committee are likely to produce a different effect when brought forward in Council. What I wish specially to guard against is any confusion between means and ends, between matters of principle and matters of detail. Where we have seen fit to modify our views we have modified them not with respect to the general principles by which our legislation should be guided, not with respect to the objects at which we ought to aim, but with respect to the particular means which it may be necessary, expedient or advisable to adopt for the purpose of attaining those objects. The objects which we had in view in introducing this legislation were the objects which we have in view now, namely, the provision of reasonable security for the tenant, of reasonable facilities for the landlord. As to the particular form and degree of the securities or facilities which the circumstances of the case justify or require, that is a question with respect to which we may justifiably modify our views in the light of further experience and inquiry. We have given a little more in one direction, a little less in another; but the general scope and tendency of our proposals remains what it was. Thus in dealing with the occupancy-raiyat we have lessened the area over which his rights may be acquired, but we have, at the same time, facilitated the proof of the rights to which he is entitled within that area. We have removed some of the checks to which enhancement of his rent was subjected, but at the same time we have tightened others, and have extended the period during which he is to have absolute immunity from all enhancement. Again, in dealing with the landlord, we have declined to adopt suggestions which have been made to us for taking away from him any ground of enhancement through the Courts to which, from long usage or otherwise, he may reasonably claim to be entitled. We have declined to adopt any suggestion which would have had the effect of making any of those grounds unworkable, and thus of perpetuating what has been justly described as a public scandal; we have endeavoured to give the landlord a right which could be honestly enforced through the machinery of the Courts and not dishonestly abused as an engine of oppression out of Court; and we have endeavoured to assist the Courts by indicating somewhat more clearly than under the present law the circumstances under which, and the limitations subject to which, the landlord's remedy is to be applied.

“With reference to these and several other provisions of the Bill, the question has usually been a question not of principle but of degree—a question where we should draw the line between conflicting claims, and, as is usual with boundary disputes, our decision has not been accepted with satisfaction by either party.

1885.]

[Mr. Ilbert.]

The question which you are entitled to ask is, 'What is the net result of our proposals?' Do they give too much or leave too much to one side or to the other? The question is *not* 'Does the Bill satisfy the expectations, reasonable or unreasonable, of one party or of the other party?' but does it—to use a phrase to which some of our critics appear to entertain an insuperable objection—does it afford a fair and equitable solution of an exceptionally difficult problem, a fair and equitable compromise between claims which are conflicting and irreconcilable? What we have endeavoured to frame has been not a landlord's Bill, nor a tenant's Bill, but a just Bill. We have endeavoured to give substantial security to the tenant without restricting more than is necessary the powers of the landlord. We have endeavoured to give reasonable facilities to the landlord without weakening more than is inevitable the customary privileges of the tenant. Whether and how far we have succeeded in our endeavour is a question which I leave to persons of cool and dispassionate judgment to determine. After hearing the vehement and angry denunciations by which we have been assailed on either side, they will, I am disposed to think, come to the conclusion that the Government of India has not ill discharged the duty which was imposed upon it of acting as a just and impartial arbiter between conflicting claims.

"I deny, then, that the Bill which is now laid before you involves a departure from the principles by which the Government of India was guided in its introduction. What foundation is there for the other charge to which I have referred, that it is wanting in completeness and finality? 'I had hoped,' says His Honour the Lieutenant-Governor, in his minute of dissent, 'that the legislation now in hand would have carried with it some measure of finality'; 'but', he goes on, 'in its present outcome there is scarcely the assurance which had been expected of a final settlement of many important principles connected with a Tenancy Bill in the Lower Provinces of Bengal.' 'I am unable,' says my hon'ble friend Mr. Reynolds, 'to regard the Bill in the form which it has now assumed as an adequate and final settlement of the question raised in this great controversy.'

"Sir, in one sense I admit the charge. That the Bill is one-sided, I deny: that it is not complete or final I will admit. But I will go further and say that any Bill of this kind which claimed for itself the characteristics of completeness and finality would carry its condemnation on its face. Look at the social and economical condition of Bengal at the present day. What are its most striking features? Are they not transformation,

transition, growth and change? Here, as elsewhere in India, and here perhaps, more than anywhere else in India, you find the past and the present, old things and new, brought into sudden and violent contact with each other, with results which are often unexpected, and which, unless there is some intervention to temper the shock, may be disastrous. You have been told with truth—and the truth is one which cannot be too often repeated or too strongly insisted on—that the Bengali raiyat is not the same thing as the English farmer, that the Bengali zamindár is not the same thing as the modern English landlord, that the rules which govern, and should govern, the relations of zamindár and raiyat are not those rules of the law of landlord and tenant with which the modern English lawyer is most familiar.

“The Bengali raiyat is not the same thing as the English farmer; he is something widely different from him. But he presents many curious and instructive points of resemblance to the English customary tenant of some six or seven centuries ago. The rights and powers claimed by the zamindár are not unlike those once claimed by the feudal lord of the manor; the privileges, duties and liabilities of the raiyat resemble in some important particulars those which once belonged to the English customary tenant, and which were gradually developed into the status either of the free-holder or of the copy-holder. In the phrase which is still technically applied to the English copy-holder, namely, that he holds ‘at the will of the lord according to the custom of the manor,’ we discern echoes of the controversies which once raged round the customary tenant of the English manor, and which still rage round the position of the Bengali raiyat—controversies in which the assertion of high proprietary rights on the part of the landlord is set against the assertion of strong customary privileges on the part of the tenant. If we were to pursue the investigation further we should find equally suggestive analogies. The bewildering multitude of tenures with local variations of nomenclature and incidents finds its parallel in the multitude of subordinate interests in land which are recorded on the Domesday survey, the English record of rights of the eleventh century. Again, it is well known that there is no point in English legal history which is more obscure than the question of the extent to which, and the circumstances under which, alienation of land was legally recognised and actually took place before the 13th century. But in the midst of this obscurity one fact is clearly established, namely, that such alienation as took place assumed the form not of sale but of sub-infeudation or sub-letting, and that the extent to which this sub-letting was carried was distasteful to the superior landlords. We know that at the instance of the great lords a famous statute was passed to

1885.]

[*Mr. Ilbert.*]

stop sub-letting; we know that while the intention of the statute was to stop sub-letting its effect was to legalize free sale, that it enabled the fee-simple tenant to alienate his interest without consulting his lord, and that it has since become the foundation of the modern English law of the sale of land. If there had been a Hansard in the days when the Statute 'Quia Emptores' became law, he might perhaps have supplied us with an additional arsenal of arguments for and against the comparative merits and demerits of sub-letting and free sale.

“However, I do not intend to weary the Council with any elaborate historical disquisition. My object in touching on these analogies between the past and the present is not to demonstrate—what has been demonstrated to satiety—that the application of the modern English landlord and tenant law to the relations of zamíndár and raiyat would be both an anachronism and a political blunder, but also to illustrate some of the exceptional difficulties which surround any attempt either to declare or to amend the law bearing on those relations. For to say that the Bengali raiyat is still living in an age which to us Englishmen has become an age of the past, is to present only one side of the picture. There is another side to it. Side by side with the landlord who exercises, and is content to exercise, his old customary seignorial rights so far as they are compatible with the modern system of Government, we have the auction-purchaser who has bought his rights as a commercial speculation, and thinks only how he can turn them to the best advantage. Side by side with the hereditary tenant, cultivating and living on his land in the old traditional fashion, we have the enterprising planter, who has got his lease and wishes to work it so as to extract from the land the greatest possible profit in the smallest possible time. The modern theory of competition rents is jostling the old practice of customary rates; the new fashion of terminable leases is threatening to displace ancient occupancy-rights. The thirteenth century is being brought face to face with the nineteenth century, and is striving with more or less success to understand and accommodate itself to its ways. The cultivator for subsistence is giving way before, or developing into, the cultivator for profit; those who have hitherto walked in the dim twilight of custom are emerging into the hard and fierce glare of law as administered by the Courts. The ideas, habits and customs of widely different ages and widely different civilization are being thrown into a common crucible, and are assuming new and strange forms. We cannot arrest this process of change; we cannot predict with certainty the rate at which it will progress or the direction which it will take if left to itself

All that we can do is to endeavour by such means as are at our disposal to guide it in the right direction ; to ease off the abruptness of the transition from the old to the new, from an age of feudalism to an age of industrialism ; to bridge over the interval between status and contract ; to prevent custom from being ousted too violently by competition ; to see that rules of law based on commercial transactions between hard and keen men of business are not applied to the ignorant and unlettered peasant before he is able to understand them or to use them.

“ Can we afford to stand aside and let things drift, trusting that they may somehow come out right in the end ? Such may be a policy which would commend itself to some of the influential classes in this country, to men of the strong hand and the long purse ; such is not a policy which the British Government of India has ever ventured, or can ever venture, to adopt ; such is not our conception of the duty which we owe to the millions whom Providence has confided to our care. We are responsible for the introduction into this country of forces which threaten to revolutionize and disintegrate its social and economical system ; we cannot fold our hands and let them work in accordance with nature’s blind laws. We must, to the best of our ability, endeavour to regulate and control their operations, and in so doing it is inevitable that we should occasionally interfere in a manner and to an extent which, to those whose institutions have not, for long ages, undergone the strain imposed by foreign conquest or foreign immigration, may not unnaturally appear difficult to justify or explain.

“ That in so doing we should be charged with ignoring or violating the laws of political economy is a matter of course. We do not ignore or violate those laws. On the contrary, the whole of our action as a State in legislation of this kind is based on a recognition and appreciation of the laws which regulate the production and distribution of wealth, just as the whole of our action as a State in dealing with famine is based on the recognition and appreciation of the laws, so far as they are discoverable, which regulate the recurrence of famines. We do not ignore these laws, but we proceed on the view that their operation is capable of being modified and controlled by human action.

“ Assuming, then, that interference is justifiable and necessary, what kind of interference is possible and expedient, what kind of legislation is suitable to the circumstances with which we have to deal ? Must we not admit, are we not always being compelled to admit, that it is a legislation of opportunism ? For a transitional period final legislation is neither appropriate nor possible.

1885.]

[Mr. Ilbert.]

What we have to do is to establish a *modus vivendi*, a working arrangement, not merely between conflicting interests, but between the customs, habits, ideas and ways of different ages and different forms of civilization. Our legislation must contain much that is in the nature of expedients, adjustments, compromises; it will inevitably contain provisions which will be to political economists a stumbling-block, and to lawyers—I will say even to law-lords—foolishness, but which, for all that, may be based on good sound common sense.

“Again, whilst fully acknowledging the necessity—the urgent necessity—of interference on some points, we can afford to admit the wisdom of non-interference on others. There are some proposals about the expediency and suitability of which we can make up our minds with reasonable certainty; there are others about which we do not see our way so clearly, and with respect to which we should prefer to wait a while. There may be points—I frankly admit that there are points—with respect to which the provisions of this Bill are imperfect and incomplete, and with respect to which we are leaving our successors to supplement our task. But the fact that we are unable to do all that we might have wished to do is no reason why we should not do what we can; the fact that there are evils for which no suitable remedy has yet been found is no reason for delaying to apply to other evils such remedies as may appear to be suitable; to admit that the range of human prevision is limited is no unmanly confession of impotence; to acknowledge that the morrow will have its task is no ground for putting off the task of the day.

“What the Council have to consider as practical men is, not whether this is an ideally perfect measure, not whether it is a final settlement of questions between landlord and tenant in Bengal, not whether it is likely to usher in a millennium either for the zamíndár or for the raiyat, but whether it represents a step in advance, whether it does anything substantial towards removing admitted defects in the existing law, whether it does not give some substantial form of security to the tenant, some reasonable facilities to the landlord. It is because I believe that the measure, however it may fall short of ideal perfection, does embody substantial improvements in the existing law, that I commend it to the favourable consideration of the Council.

“One word in conclusion on the question which, though it is not technically raised by the present motion, has been appropriately discussed upon it—the question whether we should now proceed with the consideration of this measure or

should defer its consideration until the expiration of a certain interval after the Bill has been re-published. The period of delay for which Bábú Peári Mohan Mukerji asks is a period of three months, but we all know that this practically means a delay of not less than a year, and therefore the question before the Council will be whether they will hang up the measure for another year, and thereby, amongst other things, condemn the officers of the Bengal Government and their own Committee to a re-commencement of what my friend the Lieutenant-Governor has properly described as their Sisyphean tasks; the former of piling up reports which are written in the summer, edited and annotated in the autumn, discussed in the winter, and shelved in the spring; the latter of renewing, under circumstances which involve a lamentable sacrifice of valuable time, discussions, the reñewal of which is only rendered possible by the fact that the human memory is incapable of retaining, for more than a very limited time, the vast store of facts and arguments which have accumulated round this Bill.

“ Now on what ground is this motion based? Is it on the ground that the public have not had sufficient time to consider the points of difference between the Bill which was published with the Preliminary Report, and the Bill which has now been laid on the table. My hon'ble friend Bábú Peári Mohan Mukerji has referred to the Resolution which was issued rather more than two years ago with reference to the desirability of giving greater publicity to legislative measures. That Resolution issued from my Department, and therefore I am in a special manner responsible for it. I concur entirely in every word that it contains, and I have done, and shall continue to do, all in my power to give effect to the principles on which it insists. If, therefore, the procedure which we now propose to adopt were in any manner inconsistent with that Resolution, I should be justly chargeable with inconsistency. But it is not inconsistent with that Resolution. The answer to the suggestion that no sufficient time has been given for the consideration of the Bill as now amended has been supplied by my hon'ble friend Sir Steuart Bayley, and it is this, that the alterations which have been made in the Bill since the date of its last publication are almost entirely in the nature of excision and reduction, and that we have not added any new matter of such importance as to require the opinion of the public upon it. Or is the motion before the Council based on the wider ground that the information laid before the Select Committee is not sufficient to justify their recommending the adoption of any such proposals as those embodied in the Bill? On this point, again, I need only refer to what has been said by my hon'ble friend Sir Steuart Bayley as to the excep-

1885.]

[*Mr. Ilbert.*]

tionally searching and exhaustive nature of the inquiries and reports on which our conclusions are based, and express in the most emphatic manner my concurrence with his opinion that the constitution and procedure of the Select Committees of this Council are entirely unsuitable for that kind of examination of witnesses which has been suggested. That there are depths of this vast subject which we have not fathomed to the bottom, that there are tracts which we have left unexplored, nobody denies; what we do say is that the information before us was sufficient, and sufficiently tested, to enable us to come to certain definite conclusions on certain important points, and that it is upon those conclusions that our recommendations are based. My hon'ble friend the Mahárájá of Durbhunga claims the support of the majority of the Select Committee for the motion for delay, and says that the majority of them signed dissents from certain more or less important recommendations of the Report, and therefore must be taken to have dissented from the specific recommendation that the Bill be passed as now amended. The fallacy is obvious, and the accuracy of the assertion is easily put to the test. It will be tested shortly by the vote which is to be given on Bábú Peári Mohan Mukerji's motion. I am one of those members of the Select Committee whose signature to the Report is conspicuous by the absence of a decorating star, but on the question whether there should or should not be further delay in the prosecution of this measure I appeal with confidence to the majority of the Select Committee. To the unflagging assiduity with which the members of that Committee have devoted themselves to their arduous labours no one is more willing to testify and render grateful acknowledgment than their chairman. That they should respond with alacrity to an invitation to a renewal of their labours one could hardly expect, unless indeed they belong to that exceptional class of mortals whose conception of Heaven is that of a place where congregations ne'er break up, and the sittings of Select Committees never end. But in all seriousness I apprehend that their reply would be that the information laid before them, though not complete, was sufficient for the practical purposes they had in view; that further information would not be likely to bring more united counsels; that they had completed their task, whether well or ill, at all events to the best of their ability; and that another year's delay would not be likely either materially to enlarge their knowledge, or materially to modify their conclusions.

“As for those hon'ble members to whom the privilege or penance of sharing in the deliberations of the Committee has not been extended, and who must therefore content themselves with a broad and general view of the measure which is laid before them, I would ask them merely to consider

whether the measure may not, in its present shape, be fairly regarded as a substantial and honest piece of work, and whether the advantages which might possibly arise from further enquiry and discussion are not far outweighed by the disadvantages necessarily incidental to the prolongation for an indefinite period of a state of uncertainty, tension and irritation which is in the highest degree prejudicial to the interests of landlord and tenant alike."

His Excellency THE PRESIDENT said:—"I do not think it necessary that I should trouble the Council with any observations of my own at this stage of our proceedings. I shall have ample opportunity, when we come to discuss the several points in this Bill with respect to which amendments are to be moved, of expressing my opinion in regard to them. I will therefore content myself by saying that, although it is likely that during the course of our deliberations this Bill will be considerably improved in many of its particulars, I have no hesitation whatever in giving to its general features my cordial and sincere support. I have convinced myself that it is, as my hon'ble colleague has just said, a very honest and conscientious piece of work. I am quite certain that those who have engaged in advancing it to its present stage have been actuated by the sole desire of doing equal justice to all those interests which are dealt with under the Bill. It cannot be seriously urged that this Council has not a right to legislate in the direction proposed. It so happens that I became Under-Secretary of State for India while the legislation which resulted in Act X of 1859 was still under discussion, and I then came to the conclusion, which further examination has only confirmed, that it would be idle to contend that legislation of this description is any invasion whatever of the rights accorded to the zamíndárs under the Permanent Settlement. If I thought that any clause of the Bill interfered with rights which have been granted to any class of Her Majesty's subjects in India by the Imperial Government, I certainly would not be found among its supporters; but, on the contrary, I believe that this Bill is in perfect harmony with those principles which inspired the authors of the Permanent Settlement; and I am quite certain that hereafter, when the present controversies have subsided, even those who consider their interests most injuriously affected by what it is proposed to do will acknowledge that this legislation has benefitted the agricultural interests of the country. With regard to the special point which is before us, namely, whether or not the present Bill should be hung up for another year, I can only say that, in the presence of the all but unanimous opinion which has been delivered by my colleagues in favor of proceeding at once to the immediate consideration of the Bill as amended by the Select Com-

1885.] [*The President; Babu P. M. Mukerji; Sir S. Bayley.*]

mittee, it would be impossible for me, even if I myself did not share that opinion, to undertake the responsibility of delaying a measure, the postponement of which, I am told by so many persons competent to speak with authority on the subject, would be so disastrous. In conclusion I may observe that I for one have listened with the greatest interest and pleasure to the discussion which has taken place. Although I have certainly done my best to acquaint myself with all the facts and arguments bearing on this question as far as they are contained in the voluminous literature connected with the subject, this is the first occasion on which I have had the advantage of hearing it discussed by persons so capable of handling it. I have been specially struck with the moderation, the ability, the temper and with the eloquence with which my several colleagues have placed us in possession of their respective views, and I may be permitted to add that the Native members of this Council were certainly not those who have shown the least ability in dealing with the question."

The motion was put and agreed to.

The Hon'ble BABU PEARI MOHAN MUKERJI moved that the Bill as amended by the Select Committee to which it was referred be re-published, and that the consideration of the measure by the Council be deferred for at least three months from the date of its re-publication.

He said the hon'ble members of the Council were already in possession of the reasons why he considered such a course desirable. If the opinion of hon'ble members was that the republication of the Bill at that stage was inexpedient, he would ask whether His Excellency the President could not see his way to put off the consideration of the amendments on the provisions of the Bill for two or three weeks, with a view to enable hon'ble members who were not members of the Select Committee to study the amended Bill, and to enable English-knowing landlords and tenants to give their opinions on the subject.

The Hon'ble Sir STEUART BAYLEY pointed out that the proposition of the hon'ble mover of the amendment simply amounted to this, that the postponement of the Bill for two or three weeks meant its postponement for one year. This, he presumed, was open to the same objection as the first amendment. As had also been pointed out by the Hon'ble Mr. Gibbon, any postponement of the

measure would lead to the continuance of the agitation against the Bill. For these reasons he would ask the Council to reject the amendment.

The amendment was put and negatived.

The Council then adjourned to Wednesday, 4th March.

R. J. CROSTHWAITE,

FORT WILLIAM ;
The 13th March, 1885. }

*Offg. Secretary to the Government of India,
Legislative Department.*

*Abstract of the Proceedings of the Council of the Governor General of India,
assembled for the purpose of making Laws and Regulations under the
provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at Government House on Wednesday, the 4th March, 1885.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B.,
G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding.*

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble T. M. Gibbon, C.I.E.

The Hon'ble R. Miller.

The Hon'ble Amír Alí.

The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.

The Hon'ble H. J. Reynolds.

The Hon'ble Rao Saheb Vishvanatha Narayan Mandlik, C.S.I.

The Hon'ble Peári Mohan Mukerji.

The Hon'ble H. St.A. Goodrich.

The Hon'ble G. H. P. Evans.

The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Durbhunga.

The Hon'ble J. W. Quinton.

BENGAL TENANCY BILL.

The adjourned debate on the Bill was resumed this day.

The Hon'ble the MAHÁRÁJÁ OF DURBUNGHA said :—“The Council will perhaps permit me to make one or two general observations upon the amendments which stand in my name. I have determined to withdraw a very considerable number, because I am unwilling to take up the time of the Council in urging amendments which I see from the course that the debate has taken would have very little chance of being accepted. The remaining amendments are, I think,

reasonable ones, and such as I may fairly hope this Council to accept. The Bill, as Your Lordship is aware, has made very serious inroads on the rights and privileges of the zamíndárs. A very general but most erroneous impression prevails that the Select Committee have made great concessions to the zamíndárs. The zamíndárs are certainly indebted to the Select Committee for resisting certain novel proposals, which, as the hon'ble member in charge of the Bill has told us, were urged with all the authority and ability of the Government of Bengal. But it is difficult to understand how the successful resistance of these proposals can be considered as concessions to the zamíndárs. There is hardly a clause of the Bill which does not change the law to their disfavour. Now the object of my amendments is not to ask for concessions to the zamíndárs, but to maintain the existing law as it stands at present. Those who advocate change are bound to show the necessity of the proposed innovation. Where serious alterations have been made in the existing law, and where these alterations could only be carried in the Select Committee by a narrow majority, this Council ought, I conceive, to reject such alterations, unless their necessity is clearly and conclusively shown. I hope therefore that the Council will give to me a fair and impartial consideration, and that, as moderate men, you will vote for the maintenance of the existing law, unless you are satisfied of the absolute necessity for innovation."

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA then by leave withdrew the following amendments :—

That in line 1 of section 1, clause (2), of the Bill, after the words "on such date" the words and figures "after June, 1885" be added.

That in line 5 of clause (3) of the same section, for the words "Town of Calcutta" the words "limits of any Municipality" be substituted.

That in the same clause, after the words "the Division of Orissa" the words "the Division of Bhagulpore" be added.

That in the same clause the words "the Division of Chittagong" be added.

That in the same clause the words "the Division of Dacca" be added.

That in the same clause the words "the Division of Rajshahye" be added.

1885.]

[*The Mahārājā of Durbhunga.*]

That in the same clause the words "the Presidency Division" be added.

That in lines 8 to 12 of the same clause the words "and the Local Government" to the end be omitted.

That to the same clause the following proviso be added :—

"Provided that, in case the greater portion of an estate is situated in a tract to which this Act does not apply, the whole of such an estate will be deemed for the purposes of this Act to be included within such excluded tract."

The Hon'ble the MAHARAJA OF DURBHUNGA moved that to clause (3), section 1, the following further proviso be added :— "Provided that this Act shall apply only to land which is the subject of agricultural or horticultural cultivation, or is used for purposes incidental thereto." He said :—

"MY LORD,—The entire justification for this measure of legislation, it may be granted, has been the supposed necessity of strengthening the position of the cultivator. The Act now in force, Act VIII of 1869 (B. C.), and its predecessor, Act X of 1859, which we now seek to supersede, did only apply to land which was the subject of agricultural or horticultural cultivation, or was used for purposes incidental thereto. If hon'ble members will turn to Bábú Jogendra Nath Maulik's edition of Act VIII of 1869 (B. C.), they will find the following proposition established by the decisions of the High Court, namely, that Act X was not intended to apply to any land except land of which the main object was cultivation; that the occupation intended to be protected thereby was occupation of land considered as the subject of agricultural or horticultural cultivation and used for purposes incidental thereto, such as for the site of the homestead, the raiyat or *mali's* dwelling-house. It did not include occupation, the main object of which was the dwelling-house itself, and where the cultivation of the soil, if any there were, was entirely subordinate to that; that lands leased for the purpose of building a house or a church were not the subject of the legislation of the Act of 1859, and therefore no right of occupancy could be acquired thereunder in such holdings; that no right of occupancy could be acquired in a *julkur* by a tenant in possession for a series of years; that the provisions of that law did not apply to a tank used only for the preservation and rearing of fish; that a right of occupancy was not acquired in a tank when a tank was the principal subject of the lease, and only so much land passed with the tank as was necessary for it, namely, for the banks; but where the land was let for cultivation, and there was a tank upon it, the tank would go with the land, and if there was a right of occupancy in the land, there would be a right of occupancy in the tank as appurtenant

thereto. I submit, my Lord, that my amendment fairly summarises the result of all these decisions, and should therefore be accepted as a re-enactment of the present law. In the Digest, Mr. Field attained the same goal by the following definition of the term 'land':—

'Land, when applied to land cultivated or held by a raiyat, means land used or to be used for agricultural or horticultural purposes. *Explanation.*—*Bastu*, or homestead land, is land used for agricultural purposes when it is occupied by a raiyat if the rent of such *bastu* land is payable to the same landlord under whom such raiyat holds his cultivated land.'

"It is true, as has been observed by the Hon'ble Law Member, that the chapter treating of leases in the Transfer of Property Act of 1882 applies to all leases excepting leases for agricultural purposes, but the language of the 117th section of that Act is very peculiar:—

'None of the provisions of this chapter apply to leases for agricultural purposes, except in so far as the Local Government, with the previous sanction of the Governor General in Council, may, by notification published in the local official *Gazette*, declare all or any of such provisions to be so applicable, together with, or subject to, those of the local law, if any, for the time being in force. Such notification shall not take effect until after the expiry of six months from the date of its publication.'

"My Lord, I am unwilling to allow a matter of such importance to be at the mercy of notifications in the *Gazette*, and I would, therefore, ask this Hon'ble Council to re-enact the provisions of the present law. I had already, in suggesting a previous amendment, gone some way into the question. To a certain extent they overlay each other. The previous amendment which I had intended to move was to save all lands within the municipal limit from the operation of this Act, irrespective of the object of the occupation. The object of the present amendment is to exclude all land in non-agricultural occupation, wherever situate, from the operation of this law. In the majority of instances the result would be the same, for the principal object of holding within municipal limits is not agriculture or horticulture, and similarly, on the other hand, in the open country the majority of holdings are agricultural. But in either case the change would be a fair recognition of a part of the existing law in favour of landlords, which I do not think has been the object of serious complaint, which professedly is outside the scope of the present legislation, and to which the principal reasons assigned in favour of this legislation are wholly inapplicable. I am glad to find that this was a subject which drew the attention of our hon'ble Colleague, Mr. Goodrich, in the course of the debate upon the motion of the hon'ble member in charge to take this Bill into

1885.] [*The Mahārāja of Durbhunga ; Bábú P. M. Mukerji ; Mr. Reynolds.*]

consideration ; and I have no doubt that on a little reflection this amendment will commend itself to the approval of your Lordship and of the other members of this Hon'ble Council. We are legislating now, be it remembered, for the cultivators of the soil, and not for the labourers of towns, who have no interest in land, and by the custom of the country as much as by the laws of political economy the owner of land in the midst of urban populations, as well as the proprietor of land used for non-agricultural purposes, had made what terms he chose with the occupants under him without at all entailing those risks of administrative difficulty which we are told justify this new departure from the ancient custom and land law of the country passing by the name of the Bengal Tenancy Bill."

The Hon'ble BĀBŪ PEĀRI MOHAN MUKERJI said :—" I beg to support the amendment which has been just made. I think that it is in the interest of the whole country that a law which is intended to simplify and regulate the relations between landlords and tenants should be confined solely to lands which are held for agricultural or horticultural purposes. The Council will be pleased to observe that both Acts X of 1859 and VIII of 1869 extended to the whole of the territories under the Lieutenant-Governor of Bengal, and yet nevertheless the High Court has repeatedly held, both in Full Bench and in Divisional Benches, that neither of these laws extend to municipalities. That being so, I submit it is very desirable that the proposed law should not concern itself with lands which are held simply for dwelling-houses, or for purposes of manufactories, hāts or markets, and not for agricultural and horticultural purposes."

The Hon'ble MR. REYNOLDS said :—" I cannot support the amendment, because it seems to me to go much further than is justified by the existing law or the facts of the case, and because I think that if it is carried it will have the result of nullifying, in a great measure, the Bill now before the Council. The question of the use of land for agricultural or horticultural purposes was discussed with much learning by Mr. Justice Field in his note appended to the Report of the Rent Law Commission, dated 29th December 1879, and the Commission which discussed the matter were very guarded in the language they used. They said in paragraph 11 of their Report that 'certain portions of Act X have been construed to apply only to lands used for agricultural or horticultural purposes. Whether the remaining portions are limited in their application is a broad question which has never been settled.' And they went on to say that 'it has never been doubted that the rents of tenures are recover-

[*Mr. Reynolds; Mr. Amír Alí; Sir S. Bayley.*] [4TH MARCH,

able under these Acts (X of 1859 and VIII of 1869), and these commonly include much more than land used for agricultural purposes.' And consequently the Rent Law Commission in their draft Bill introduced a special definition of 'land' which they extended to certain portions of the Bill, with reference to land other than agricultural or horticultural. It has been said that there are certain decisions of the High Court showing that Act X of 1859 did not apply to non-agricultural lands. With reference to this, it must be remembered that Act X of 1859 was not substantive law, but merely a Procedure Act. But there is a further objection which goes to the root of the question, and that is, that if the amendment were carried it would have the effect of excluding from the operation of the Bill not merely all waste lands, but all lands not actually under cultivation at the time the question might be raised. It would leave it open to a landlord to contend that a raiyat's right of occupancy did not extend to those lands of his holding which were not actually under cultivation at the time. It is, in my opinion, better for the Council to leave the question to be decided by the Courts."

The Hon'ble MR. AMÍR ALÍ said:—"I would have been inclined to support the amendment if it had been differently worded, but, as has been pointed out by the Hon'ble Mr. Reynolds, if the amendment is carried it will exclude from the operation of the Act such lands as are used for the time being for grazing or pasturing purposes, and waste lands let to a raiyat with other lands for purposes of cultivation. Of course, I perfectly understand the reason which induced the Hon'ble the Mahárájá of Durbhunga, and the Hon'ble Bábú Peári Mohan Mukerji, to endeavour to exclude from the operation of the Bill such lands as were used for manufactories and building purposes. By allowing the section, however, to remain as it is, we avoid greater risks than those the amendment proposes to cover. If any difficulty arises in its practical application, the question will have to be viewed on the broad basis of expediency. I think the amendment will give rise to difficulties unless the wording is sufficiently widened to include other lands besides those used for agricultural and horticultural purposes."

The Hon'ble SIR STEWART BAYLEY said:—"The Council has to deal with this amendment as it stands. The Hon'ble Mr. Reynolds has pointed out that it will have the effect of limiting the raiyat's right of occupancy, as he would thereby lose the right as to all waste lands and lands not used for agricultural and horticultural purposes. I may point out also that the effect would be to remove from the scope of the Bill, which deals with tenures

1885.] [*Sir S. Bayley; The Mahārājā of Durbhunga; Bábú P. M. Mukerji.*]

generally, all such parts of a tenure as may be used momentarily for other purposes than agriculture or horticulture. It is much safer to trust to the Courts to apply the law to these cases. I therefore entirely support the Hon'ble Mr. Reynolds' objection."

The amendment was put and negatived.

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the following amendments:—

That for clause (7) of section 3 of the Bill the following be substituted:—

" 'Tenure' means the interest of a person holding immediately or mediately under a proprietor and above a raiyat."

That in line 2 of clause (16) of the same section, after the words "any other officer" the words "of not less than ten years' standing" be added.

That in line 2 of clause (17) of the same section, after the words "any officer" the words "of not less than ten years' standing" be added.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that sub-section (5) of section 5 be omitted. He said:—

"The sub-section runs thus:—

'Where the area held by a tenant exceeds 100 standard bighás, the tenant shall be presumed to be a tenure-holder until the contrary is shown.'

"Hon'ble members are aware that the practice of exchanging written engagements between the tenant and his landlord did not heretofore obtain in these provinces to a large extent. The result of the presumption would, therefore, be in most cases to convert raiyats holding more than 100 bighás of land into tenure-holders. By the operation of the rules of succession the country would soon be presented with the spectacle of tenure-holders possessing only 15 or 20 bighás of land, and following their own ploughs in the fields. But other and more serious consequences would also follow such a conversion. Before the question, whether a man is a raiyat or tenure-holder, is judicially determined, the status and rights of his sub-raiyats would remain in great uncertainty, and the Courts would find the greatest difficulty in determining what provisions of the law would apply to cases of ejectment or enhancement of rent instituted by him; whether, for instance, his sub-raiyats should be treated simply as sub-raiyats or as occupancy-raiyats. In every such suit the Court must bring in the zamíndár as a party, and decide the prelimi-

nary question before it can proceed with the actual merits of the case. Great difficulty would also arise in determining the rights of parties. When a zamíndár wishes to make an improvement which embraces the lands of such a raiyat along with the lands of other raiyats, would the tenure-holder *in posse* be entitled to claim to make the improvement himself? The Bill provides for no such case. The same complications will arise when such a raiyat wants to establish a mart or make manufactories on his land. Viewed in whatever light, it is clear that this rule of presumption would lead to enormous litigation."

The Hon'ble SIR STEUART BAYLEY said:—"I must point out to the Council that the effect of the presumption has been greatly misapprehended by the last speaker. It is not the case that its effect would be to convert raiyats holding more than 100 bighás into tenure-holders. Apparently what he objects to really is not the presumption but the attempt to assist the Courts in deciding whether a man is a tenure-holder or a raiyat at all. The question at issue in the first instance is whether a man is a raiyat or a tenure-holder: well, all that he said about the landlord being dragged into Court depends upon the uncertainty the Court would feel as to whether a man is a tenure-holder or a raiyat. If you cut out this presumption the uncertainty remains; the landlord would be just as much dragged into Court as before. Consequently the retention of this presumption would make no difference, so far as the necessity of the landlord being a party to the suit was concerned. There was, however, a real reason for the presumption, and it was this. The question has constantly to be decided both by Courts and by Settlement-officers whether a man is a raiyat or a tenure-holder. Now, we do not absolutely define a tenure-holder, but we describe him as a person primarily who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents, or bringing it under cultivation by establishing tenants on it, and we describe a raiyat as primarily a person who has acquired a right to hold land for the purpose of cultivating it himself. The first thing then which the Court has to do is to ascertain whether a man is a tenure-holder or a raiyat. If the land was given for the purpose of collecting rents, then he is a tenure-holder. We tell the Courts the first thing they are to look to is local custom, but local custom may not always be sufficient to guide them, and then they have to ascertain what was the original object of the tenancy. There is still some difficulty, and it is one which experienced officers tell us it is essential the Courts should be able to decide. Well, in that case we fall back on the arbitrary presumption derived from the area of the holding. It will, I suppose, be admitted

1885.]

[*Sir S. Bayley; Mr. Evans.*]

that in nine cases out of ten, where a man takes 100 bighás of land, he cultivates it through others, and only cultivates a small portion of it directly. The general consensus of opinion is that the standard is more than fair. Having thus explained how the presumption will work, I would ask the Council to consider how far it is reasonable to say that it would convert every raiyat into a tenure-holder. It will do nothing of the kind. It will in cases of real doubt give the Courts that assistance of a presumption which has already been decided by the High Court to be in principle a presumption by which the Courts should be guided. It will not really go beyond this. Then there is a point made in the dissent of the Hon'ble Mr. Gibbon that we ought to include sub-letting in the presumption. The difficulty is this, that if a man sublets only one or two bighás of land out of 100 bighás, that has no bearing on the original question the Court has to look to. Unquestionably if he sub-lets a large portion of his holding, then the Court will take this as an indication of the probability that he got it for the purpose of sub-letting; but this points not to basing the presumption on some portion, however small, of the holding being sub-let, but rather to drawing an arbitrary line and basing it on the sub-letting of a half, a quarter, or three-quarters of the holding. This the Select Committee objected to as improper in itself, and as introducing an element into the litigation which is particularly difficult to prove. Leaving the presumption as it is, based on area alone, we thought the Courts would always be able to take the facts into consideration. On the contrary, if you clog it, with the condition that there must be an arbitrary proportion of area which must be sub-let, you put the Court into the difficult position of finding out exactly what proportion is sub-let, and this is not easy to prove, while it is on the other hand a condition which the raiyat can very easily evade. I therefore hope the Council will see their way to uphold the section as it stands."

The Hon'ble MR. EVANS said:—"I agree with the hon'ble member in charge of the Bill. The question whether a man is a tenure-holder or a raiyat is often very difficult to decide owing to the difficulty of obtaining proof as to the original conditions of the tenure or holding when it is ancient. It being a matter of fact—so far as we can ascertain—that the majority of persons holding over 100 bighás are tenure-holders, it was thought right by the majority of the Select Committee to lay down a rule for the guidance of the Courts in cases in which no satisfactory evidence was forthcoming as to the nature of the tenure or holding. That rule is that, until evidence to the contrary is given, every holder of over 100 bighás shall be treated as a tenure-holder. But if it is the interest of either party to rebut this presumption, they are at full liberty to do so. The section has no further effect than this and is I think useful and fair."

The Hon'ble MR. REYNOLDS said :—“ I wish to add my testimony to what has fallen from the hon'ble member in charge of the Bill. Speaking as a member of the Board of Revenue, I can say from my experience that no question has been more unsettled and has given more trouble than the question of whether a tenant is a tenure-holder or a raiyat, and in reference to this class of cases the law would give some sort of guidance in coming to a conclusion.”

The Hon'ble MR. GIBBON said :—“ I will support the amendment, although I cannot agree with the reasons adduced by the hon'ble mover in support of the motion. In fact, I think the answer given by the hon'ble member in charge of the Bill is absolutely correct as far as it goes. But at the same time I cannot agree with the hon'ble mover in his view of the probable effect put on the section. I agree to the amendment of the section, because it is absolutely wrong in principle and contrary to fact. Under the Bill a tenure-holder means primarily a person who has acquired land for the purposes of collecting rents or bringing it under cultivation by establishing tenants on it: a raiyat means primarily a person who has acquired land for the purpose of cultivating it himself or by members of his family or by hired servants.

“ The question as to whether a tenant is a tenure-holder or a raiyat is one which depends not on the area of the holding but on the conditions and purport for which it was acquired. There are many tenures of less than 100 bighás, and many occupancy-holdings of over 100 bighás. A dispute may arise as to whether a tenant is a tenure-holder or occupancy-raiyat, between a proprietor and tenant, between a tenure-holder and occupancy-raiyat, and between an occupancy-raiyat and his sub-tenant.

“ It may at one time be to the interest of the tenure-holder, with a view to obtain a permanent tenancy, to declare himself to be a raiyat; it may be to the interest of an occupancy-raiyat to attempt to acquire the position of a tenure-holder. When deciding whether a tenant is a tenure-holder or occupancy-raiyat the Court will have to consider the object for which the tenant acquired the holding. If the presumption is to hold good, if holdings of more than 100 standard bighás are to be presumed to be tenures until the contrary is proved, it will also be presumed that holdings of under 100 standard bighás are occupancy-holdings. It should be remembered that a sub-raiyat cannot acquire occupancy-rights in the land, and the effect of this presumption will be that tenants holding land on tenures of under 100 bighás will have to prove their right to hold as occupancy-tenants by first proving the conditions under which their landlord acquired his title—an impossibility.

1885.] [*Mr. Gibbon ; The Lieutenant-Governor ; Mr. Gibbon ; The Mahárájá of Durbhunga.*]

“In many districts the local measurement varies—every tuppa, every village has its own measuring rod. Take for instance my district; in some parts it is three standard bighás to the local bighá, in some parts ten. The consequence will be that until a preliminary investigation is held and it is decided whether the holding is over or under 100 standard bighás no case can proceed.

“The sub-section is wrong in assumption and contrary to fact; it will retard suits instead of assisting the Courts; it will not assist a single person to set up a valid title; it may induce many to claim rights they do not possess. It will induce many to do wrong; no one to any good.”

His Honour THE LIEUTENANT-GOVERNOR said:—“The question before the Council is as to the presumption as to the status of a tenure-holder from the area of his holding. It is one which has been the subject of much discussion, and though I don't mean to go over the whole subject in reference to what has been written or considered before, I would point out that there is a general concensus of opinion in favour of the adoption of the proposal contained in the Bill. It may be noticed that in the view of several authorities, whose opinions deserve respect, the 100 bighás is thought too high a limit; while again there are many excellent authorities, both executive and judicial, who contend that the presumption should be changed into an absolute rule, not be a matter of presumption. The Select Committee, however, prefer to adopt the proposal of presumption, and I need not add anything to the arguments of hon'ble learned members of this Council, who from their experience in our law courts are in the best position to say that the section as it appears in the Bill will facilitate the judicial decision of the difficult question, which often arises, whether a holder of land is a tenure-holder or a raiyat. I have not been able to follow the arguments of the Hon'ble Mr. Gibbon, because I was not able to hear all that he said. But on one point, as to the uncertainty attending the ascertainment of the quantity of land held by an individual owing to the system of measurement differing in almost every village, I would point out that the rule laid down by the Bill is that the land shall be measured by the standard bighá; therefore, that argument would not hold good. I shall certainly oppose the amendment and support the section as it stands.”

The amendment was put and negatived.

The Hon'ble Mr. GIBBON by leave withdrew the amendment that section 5, sub-section (5), of the Bill be omitted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that Chapter III be omitted.

[*Bábú P. M. Mukerji ; Mr. Evans ; Mr. Reynolds ;* [4TH MARCH,
Mr. Amír Alí.]

The Hon'ble Babu PEARI MOHAN MUKERJI moved that section 8 be omitted. He said :—“This section gives the Court power to direct that the enhanced rent, instead of coming into operation at once, shall increase yearly by degrees until the amount decreed has been reached. When a Court on the evidence before it considers that a tenant is bound to pay rent at a certain figure to his landlord, I do not see what circumstances it would take into account for ordering progressive enhancement. The provision deprives the landlord of a portion of what the Court has judicially found to be his just due, and it is, therefore, wholly indefensible. I shall read to the Council the remarks made on it by Lord Bramwell :—

‘Now, what consideration would influence the Court I do not know. Whether, if the tenant had got half-a-dozen children, it would be a hardship upon him to have his rent suddenly enhanced, I do not know. I do not see how that can be taken into account, or, indeed, what could be taken into account really under such a clause as that.’”

The Hon'ble MR. EVANS said :—“I think there are certain cases in which it is desirable to give the Courts this discretion, but I don't think they ought to exercise it generally. Where from the peculiar circumstances of the case an enhancement of from 100 to 400 per cent. is decreed, it is very desirable that the Courts should exercise this discretion so as to enable the tenant to adapt himself to so complete an alteration of his circumstances and to avoid immediate ruin.”

The Hon'ble MR. REYNOLDS said :—“I think this section makes a very reasonable provision ; it was a recommendation of the Rent Commission, who introduced it into their Bill ; and there are special reasons for retaining it with reference to tenures, because, although it is practically uncommon that the rent of a tenure is enhanced, yet when it is enhanced it is a common thing to enhance it very largely. In a case referred to in the report of the Dacca Conference, the rent of a tenure-holder was enhanced from Rs. 1,326 to Rs. 5,062 at one stroke, and it seems equitable to give the Courts a discretion to declare that the enhancement should be spread over several years.”

The Hon'ble MR. AMÍR ALÍ said :—“I will support the retention of the provision in the Bill for the same reason that I supported it in Select Committee. From some experience which I have had of tenure-holders in Eastern Bengal, I think this provision will be of the greatest boon to them. As has been already remarked, the rents of these tenure-holders have often been enhanced in such a way as to cause a great deal of hardship, and the absence of any discretionary power in the Courts has been much felt in reference to these cases. A merely discretionary power reserved to the Courts can hardly injure the zamíndár.”

1885.] [*Sir S. Bayley; The Mahārājā of Durbhunga; Bábú P. M. Mukerji.*]

The Hon'ble SIR STEUART BAYLEY said :—“ I wish to say a few words in support of the objection taken by the Hon'ble Mr. Reynolds to this amendment. He has explained that it is wanted in behalf of tenure-holders. But the hon'ble mover of the amendment has supported it on the principle laid down by Lord Bramwell. If Lord Bramwell had experience of rent-suits, he might perhaps have understood the reason for such a provision. He would have known that the principle was one which was admitted in the enhancement of revenue in temporarily-settled estates by the Government. And the reason of it is simply this, that although a man might hold land at a low rate for some time, yet when his rent was enhanced it was not in the interest of the Government or the proprietor to reduce that man's means of subsistence—that what he had to spare from the means for the support of his family was the amount of money he had been in the habit of giving to the cultivation of the holding. If the whole of the enhanced rent was demanded at once, the chances were that his cultivation would be injured, that he would have to sell his bullocks and to reduce his capital. It is not desirable therefore to reduce his agricultural resources too suddenly. That is the meaning of the section, and that is why I ask the Council to support its retention.”

The amendment was put and negatived.

The Hon'ble the MAHARAJA OF DURBHUNGA moved that section 9 of the Bill be omitted.

The Hon'ble BABU PEARI MOHAN MUKERJI moved by way of amendment that the word “ten” be substituted for the word “fifteen” in section 9. He said :—“The minimum period during which an enhanced rent should obtain currency was fixed at 10 years in the draft Bill of the Rent Commission, in the Hon'ble Mr. Reynolds' Bill, in the Bill which was finally submitted by the Government of Bengal to the Government of India, and also in the Bill which was introduced in this Hon'ble Council in March, 1883. The change from 10 to 15 years was made for the first time by the Select Committee last year. Considering the rapid progress the country is making, and the prospect of a steady rise in the price of agricultural produce, the change is wholly indefensible. Whenever there is a rise in prices, not temporary or casual, the landholder is entitled to an enhanced rent, that is, to such rent as would represent the changed value of money, and it would be depriving him of his just dues if an arbitrary limit be imposed on his right to get that rent. For the purpose of preventing frequent repetitions of claims for enhancement of rent, it would be enough if it be provided, as was done in the original Bill, that a rent once en-

hanced shall not be again enhanced within 10 years of the previous enhancement. But as a matter of fact grounds for enhancements not unfrequently arise at shorter intervals. I find this clearly recognised in a rule regarding settlements issued by the Board of Revenue under the authority of the Government of Bengal. With your Lordship's permission I shall read to the Council the rule in question :—

'Where, however, a settlement has fallen in, or is likely to fall in, before arrangements for a fresh settlement are or can be completed, the Collector should, if the estate belong to an individual, ordinarily settle it summarily year by year, securing in the engagements any increase of revenue which the extension of cultivation or other enhancement of assets, ascertained by summary enquiry, may seem to justify. If the estate be the property of Government, it should, as a rule, be taken under khás management.'

"But whatever might be the rule as regards settlements made by Government, I think private proprietors should not grumble if the 10 years' restriction be imposed in cases of enhancement for rise in price of produce."

The Hon'ble MR. REYNOLDS said :—"The question raised by the amendment seems to be merely a question of substituting 10 for 15 years. I suppose it will be admitted that we ought to have the same rule for tenure-holders and for raiyats, because, as the tenure-holder has to a certain extent to depend on the rent he realises from the raiyats, it seems naturally to follow that his rent should not be increased at more frequent intervals than he can increase the rents of his raiyats ; and the Select Committee agreed that the term of 15 years, which is only half the term recommended by the Famine Commissioners in their report, should be applied to tenure-holders. But with regard to what the hon'ble mover of the amendment said as to the practice of the Government, and the instructions contained in the Board's rules, in respect to the settlement of Government estates, I wish to represent that the passage the hon'ble member quoted simply referred to purely temporary arrangements which might be made at the end of the expiry of one settlement and until a fresh settlement has been concluded. The rule provides that in such cases a summary settlement should be made year by year, because we hope every year to make a final arrangement ; and there is nothing unfair in saying that such a summary settlement is not to be made on the old jamá but on the increased cultivation and profits. But the regular term of settlement in Government estates is for 30 years ; so that, if the hon'ble member relies on the precedent of Government action in the matter, his contention is not supported. I think the section should be allowed to stand as it is."

1885.] [*Mr. Gibbon; the Lieutenant-Governor; Sir S. Bayley.*]

The Hon'ble Mr. GIBBON said :—“ I support the motion on the ground that there is no necessity for it in this chapter of the Bill. But at the same time I consider that if any provision of the kind is necessary, the term should be increased rather than decreased. But it is not necessary in this chapter, and imports an arbitrary limit. As far as I can see, a tenure-holder can only be enhanced on two grounds—where the rent of the tenure is below the customary rate payable by persons holding similar tenures in the vicinity, and, where no such customary rate exists, up to such limit as the Court thinks fair and equitable. Therefore, if a tenure is once enhanced, it can only be again enhanced when the rent is below the rental of other tenures in the neighbourhood or when the Court thinks such enhancement is fair and equitable. It is therefore unnecessary to put any term to the enhancement of the rent of tenures.”

His Honour THE LIEUTENANT-GOVERNOR said :—“ I don't think any question has received greater consideration at the hands of the Select Committee than this. Recurring demands of the zamíndár for enhanced rents have been the cause of most of the discontent, ill-feeling and litigation which prevails throughout the country; and the adoption of a limit in this chapter has followed the rule which it was thought desirable to declare in the case of the raiyat. There could be no distinction between the two. Fifteen years, as the Hon'ble Mr. Reynolds has pointed out, is just half the term which was recommended by the Famine Commission, whose report has furnished many points for consideration in connection with this Bill. I am glad, however, to find from the testimony of the Hon'ble Mr. Gibbon that, if any alteration is made, it should rather be in the direction of increasing than of reducing the term of years.”

The Hon'ble SIR STEUART BAYLEY said :—“ I understand the hon'ble the Mahárájá of Durbhunga to move that section 9 be omitted, and the Hon'ble Peári Mohan Mukerji to move as an amendment that the period of 15 years provided in the section be reduced to 10 years. I don't therefore understand whether the hon'ble mover of the amendment is supporting the original motion. Speaking of the motion itself, I think it ought to be rejected, because then a landlord may enhance the rent of a tenure-holder every year, and there would be absolutely no check upon him; it would certainly cause the tenure-holder an enormous amount of hardship. Then, as to what the hon'ble mover of the amendment said as to this section having had no place in the first Bill or in the Bill which was introduced in the Council. The real fact is that the section was there, but the period has been altered to fifteen years; and the reason for the alteration in this chapter is a very simple one. The raiyat from whom the tenure-holder receives his rent is protected from enhancement for fifteen

[*Sir S. Bayley ; The Mahárájá of Durbhunga ; Sir S. Bayley ;* [4TH MARCH,
the Mahárájá of Durbhunga ; Mr. Reynolds.]

years; it would be unjust therefore not to protect the tenure-holder for the same period. If he cannot enhance his rents more than once in 15 years, then his dues to the superior landlord, which are paid out of these rents, should not be enhanced more frequently. The real question is—What is the proper term of protection for raiyats? It must be the same term for tenure-holders as you give to the raiyats, and when we come to the amendment on that section I shall be prepared to defend the period of fifteen years given to the raiyats. In the meantime I would ask the Council to observe that, as had already been forcibly pointed out, we have taken only half the term recommended by the Famine Commission, namely, the term of thirty years, which prevails in the settlement of Government estates. I therefore oppose both the amendment and the original motion.”

The amendment was put and negatived; and the original amendment was by leave withdrawn.

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that in lines 4 and 5 of section 10 of the Bill, the words “consistent with the provisions of this Act and” be omitted.

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA moved that lines 4 and 5 of section 10 of the Bill be omitted, and the following proviso be added to the section:

“Provided that in case of contracts entered into since the commencement of this Act, a condition should be one consistent with the provisions of this Act.”

The Hon'ble SIR STEUART BAYLEY having declared his willingness to accept this amendment, it was put and agreed to.

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA moved that section 11 be omitted. He said:—“I think the question of the transferability of a permanent tenure had better be left to local custom in the same manner as with regard to occupancy-holdings.”

The Hon'ble MR. REYNOLDS said:—“I do not think the question of the transferability of permanent tenures rests on the same basis as that of occupancy-holdings. The transferability of a permanent tenure is a generally accepted principle. Section 13 of the Bill of the Rent Commission declared that all permanent tenures should be hereditary, devisable and transferable, and in their Report the Commission said that they had merely stated what they believed to be in accordance with the accepted usage of the country. The only case in which a permanent tenure is noticed in the Digest as not being transferable is

1885.] [*Mr. Reynolds; Mr. Amir Ali; The Maharája of Durbhunga; Mr. Reynolds.*]

the case of the ghatwali tenure, and this is covered by section 181 of the Bill. In all other cases the transferability of a permanent tenure is an accepted principle, and I do not see why the Council should not recognize this in the Bill."

The Hon'ble MR. AMIR ALÍ said:—"Every word which I have said with reference to the expediency of making occupancy-tenures transferable applies with greater force and reason to making permanent tenures transferable. The amendment proposed will have the effect of doing away with the established custom, which exists almost in every district, with reference to every description of tenures. With the exception of the one class of tenures mentioned by the Hon'ble Mr. Reynolds, I do not know of any tenure which is not transferable at present. If this motion is carried, all tenure-holders who at present exercise the right without any question or objection from the zamíndár will lose the right altogether. I therefore oppose the motion."

The amendment was put and negatived.

The Hon'ble the MAHÁRÁJA OF DURBHUNGA moved that after section 13 of the Bill the following section be added:—

"The landlord, within sixty days from the service upon him of a notice of sale under section 12 or 13, may notify to the authority issuing the notice his objection that the transfer was against custom or contract, and may institute a suit in the proper Civil Court for obtaining such a declaration.

"The Court passing such a declaration shall, if the plaintiff so ask, pass an order requiring the purchaser to restore possession to vendor on such terms as the Court may consider proper between the contracting parties, and, on the refusal of the vendor to take back possession, his landlord will have the power to enter into possession himself."

He said:—"The object of this motion is to protect existing custom. If it is the custom of tenure-holders to transfer their tenures without the consent of the landlord, this section would not touch that custom in any way."

The Hon'ble MR. REYNOLDS said:—"The first clause of the amendment seems unnecessary and superfluous, because no enactment of the legislature is necessary to enable the landlord to notify his objections and institute a suit in the Civil Court, and the wording of the second clause seems to me to be of a very unusual character. I think it objectionable that, if the vendor refuses to take back the land, the landlord should be allowed to take possession of it himself."

The Hon'ble MR. GIBBON said :—“ The amendment is in a shape, that I do not approve, but I think it is a valid attempt to rectify an omission in the Bill. The Bill as it was submitted to the Select Committee provided a procedure under which the landlord could dispute the validity of a document submitted to him. But the Bill contains no provision for that whatever. It simply provides that when a transfer has taken place the transferor or transferee should pay, not only the registration fee, but the landlord's fee, and that a copy of the document is to be submitted to the landlord ; but it provides no means by which the landlord can dispute the validity of the document. I maintain that under the Bill, if a document is submitted to the landlord, the instant he accepts the fee, whatever he may do afterwards, it will be taken for granted that he has consented to the terms and conditions of the transfer. The Bill gives him no remedy whatever. I object to the registration clauses in the Bill No. II being omitted from this Bill. This proposal is to provide a remedy, to allow the landlord the means of disputing not only the transfer of the holding, but also the terms stated in the document. We were told in Committee, if I understood the matter rightly in Committee, that it is the intention of the Government of Bengal to provide for that in another Bill. But that is not sufficient. What is wanted is to provide some means of allowing the landlord to contest a document of which he does not admit the validity. I do not say I approve of the amendment before the Council. It compels the landlord to take the initiative in every case. This I do not approve of. The Bill No. II allowed him to do so ; there is nothing provided for cases in which the landlord refuses to take the fee. Suppose he returns the fee and does not admit the validity of the document ; what is to be the result ? The words of the amendment do not meet the case. I would like to see the matter considered again by the Government.”

The Hon'ble Sir STEUART BAYLEY said :—“ I think there is a misapprehension on the part both of the hon'ble mover of the amendment and of the Hon'ble Mr. Gibbon about the effect of this section. The registration which the Bill provides for is the registration of a document, not a registration of title. The registration of a document does not affect the validity in any way whatever of the transfer. If the transfer is valid in itself, well and good ; if it is invalid, the registration does not make it valid, or alter its nature in any way ; consequently, whatever remedy the landlord would have without this section he would have with it. Whether he acts upon the notice or not is a question quite unconnected with the effect of the registration of the document. He can sue now, and it is quite unnecessary to say that he may sue. Then look at the effect of the second clause of the amendment as it is proposed : it seeks

1885.]

[*Sir S. Bayley ; Bábú P. M. Mukerji.*]

to vest in the Court a discretion to restore the possession of the vendor, and provides that on his refusal the landlord may enter on possession. Can anything be more dangerous as to the effect that might be given to it in collusion between the landlord and the vendor? It will be so dangerous that I do not think the Government can assent to such legislation. But I admit that what the Hon'ble Mr. Gibbon said is true. The landlord should no doubt have some means of objecting to the validity of any transfer before the document effecting the transfer is entered in any register of titles. Provision for the registration of the owners of permanent tenures will be made in the Bengal Bill. It is a distinct understanding that this will be done, and a provision enabling the landlord to contest the terms of the deed has, I understand, been included in the draft Bill which has been introduced into the Council of the Lieutenant-Governor of Bengal. The Bill before the Council does not provide for the registration of titles, but only for the registration of documents."

The amendment was put and negatived.

The Hon'ble BĀBŪ PEĀRĪ MOHAN MUKERJĪ moved that section 18 be omitted. He said:—"Hon'ble members will see that whatever new rights this section gives to a raiyat holding at a fixed rent or fixed rate of rent are centred in the word 'transfer' in clause (a) of the section, the protection given by clause (b) being identical with the protection given to all occupancy-raiyats by clause (b) of section 25. The question, therefore, is, should a raiyat holding at a fixed rent or fixed rate of rent be allowed the same rights with respect to the transfer of his holding as a permanent tenure-holder? I do not think that the economic considerations which have induced the Select Committee to strike out the provisions for a free sale of occupancy-holdings lose a whit of their force in the case of holdings protected from enhancement. The conditions and social positions of the raiyats are in both cases the same. In many instances the raiyat holding at a non-enhanceable rent is much worse off than his neighbours by reason of his having sub-let his holding, and they will be equally subject to the temptation of borrowing money at usurious rates of interest if their holdings be declared transferable. The very fixity of the rent would be an additional inducement to money-lenders and land-jobbers to get the holdings out of the hands of the raiyats, and the result will be a repetition of the consequences which followed the operation of similar provisions in the Dekkhan and the Sonthal Parganás. Again, regarding this section with section 50, I foresee an abundant crop of litigation which it would give rise to. If the right of free sale had been con-

[*Bábú P. M. Mukerji; Mr. Quinton; Mr. Reynolds.*] [4TH MARCH,

fined to holdings which are protected from enhancement by judicial decrees or by registered leases, there would have been no uncertainty as to the holdings to which the right would extend; but in the face of the 20 years' rule of presumption all raiyats must claim a right of free sale, unless they wish to forego for ever their right to claim protection under that rule; and the question will not be finally determined except by a regular suit, involving appeals to the superior Courts. In the meantime the rights of the parties would remain uncertain, and the Collector's registers would be encumbered with entries which he would have, perhaps, ultimately to strike out. Litigation is inevitable when a right is made dependent on an uncertain and contingent right; doubly so when such contingent right rests on a rebuttable presumption."

The Hon'ble MR. QUINTON said:—"With reference to the remarks which the hon'ble member has just made, I will merely bring to the recollection of the Council that in the permanently-settled districts in the North-Western Provinces the right to transfer their holdings has been specially conceded by law to the raiyats, and, as far as I know, none of the evil results which have been anticipated to ensue from this section have taken place."

The Hon'ble MR. REYNOLDS said:—"The position of a raiyat holding at a fixed rent is surely different from that of a mere occupancy-raiyat. The Rent Commission were of opinion that the status of a raiyat holding at a fixed rent is more nearly assimilated to that of a tenure-holder, and they provided accordingly in their Bill. It has been said that the reasons why the occupancy-raiyat should not have a right of free transfer apply equally to raiyats holding at fixed rents; but there are some facts which would lead to an opposite conclusion. In discussing the question of the occupancy-raiyat having a right of free transfer much doubt was expressed—in the event of the right being conceded—as to how far he would be likely to make a bad use of the power. But with regard to raiyats holding at fixed rents we have instances of the existence and exercise of an undisputed right of transfer—I speak of the guzáshtadárs of Shahabad—and the result has not been undesirable. It has not worked badly there either to their interests or the interests of cultivators generally. With regard to the other part of the objection, namely, the uncertainty as to the status of the raiyat, and the difficulty of saying whether a particular tenant is a raiyat at fixed rates or not, that point rather arises on the Hon'ble Mr. Gibbon's amendment than on the amendment before the Council, which proposes to omit the section altogether. Therefore I am certainly not in favour of the present motion."

1885.]

[Mr. Hunter ; Mr. Amir Ali.]

The Hon'ble MR. HUNTER said:—" I also must oppose the amendment. The argument of the hon'ble mover of the amendment is directed against the right of transferability by tenants holding at a fixed rent. But it appeared to the Select Committee that there was ample evidence to show that the right of transferability now legalised for tenure-holders should also be recognised for occupancy-raiyats. Great difference of opinion existed, however, as to the conditions under which that right should be legalised, for certain classes of such raiyats. But the present section takes the class of raiyats which has the greatest fixity of tenure, and which has held (or has presumably held) their lands since the Permanent Settlement. The evidence clearly shows that this class of raiyats has by custom and as a matter of fact exercised the right of transferability. The custom is now firmly established in Bengal, and I think the Bill does wisely in recognising and giving legal validity to the custom. From what has fallen from the Hon'ble Mr. Quinton it would also appear that the custom is established in the North-Western Provinces, and that it has been legalised in that part of India without any evil consequences."

The Hon'ble MR. AMÍR ALÍ said:—" The arguments put forward by the Hon'ble Bábú Peári Mohan Mukerji to withdraw the right of transferability from raiyats holding at fixed rates seem to establish the expediency of granting the right to all classes of occupancy-raiyats. I shall urge in detail the grounds on which I ask for the extension of the right to occupancy-raiyats in general when I move my own amendment. I would only remark at this stage that practical experience furnishes a complete answer to the theories of my hon'ble friend. The argument that a raiyat who does not hold at a fixed rent or a fixed rate of rent will claim the right of transfer simply for the purpose of getting the rate fixed, is imaginary. The condition of the guzáshtadárs in Behar amply shows that the raiyats' holdings at fixed rents for a long time have exercised the right without any difficulty and without any question, and are most prosperous as compared with other raiyats of Bengal and Behar. Had there been any ground for the apprehensions entertained by the hon'ble mover of the amendment, surely there would have been some facts brought forward in support of general propositions. I submit there is no ground for supposing on purely *à priori* reasoning that the power of transferability given to these raiyats will be misused by them."

The amendment was put and negatived.

[*The Mahárájá of Durbhunga; Mr. Gibbon.*] [4TH MARCH,

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that in line 1 of section 18, the words "or rate of rent" and clause (b) be omitted.

The Hon'ble MR. GIBBON moved that in section 18, after the words "in perpetuity" the words "under a mukararrí lease or a judicially declared title" be added; and to clause (b) of the section the following words be added:—"or on the ground that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy." He said:—"I will say at once that the whole effect of the section turns on the effect of the twenty years' presumption under which a raiyat can claim a right to hold at a fixed rent. My object is that only those tenancies of which the titles are admitted or decreed should come under the operation of the section. The section makes all tenants holding at fixed rents subject to the same rights as regards transfer. The practical effect of that is that, when a holding is transferred, notice of transfer would have to be served on the landlord in the same way as notice of transfer of a tenure under sections 12 to 17 of the Bill; and the practical effect will also be that they will come under the provisions of the Incumbrance chapter (XV) of the Bill, which declares that all 'tenures' shall be sold subject to their incumbrances; and that the ordinary occupancy-holding should be sold subject to the voiding of such incumbrances. As long as a transferor or transferee can set up a presumption, it will lead to litigation and loss to the landlord. It will compel the landlord either directly or impliedly by accepting the fee to admit the right, or compel him to contest it at once. My object is to avoid that. By bringing holdings at fixed rates, where the title to hold at fixed rates is admitted or decreed, under the operation of the Incumbrance chapter no harm will be done. But where the title is disputed you allow the judgment-debtor by setting up the presumption to attempt to set aside a sale on the ground that his holding is a holding at fixed rates and not an ordinary occupancy-holding, that it should have been sold subject to its incumbrances and not with power to void them. Section 287 of the Civil Procedure Code lays down the rule that where a holding or any property is sold all material information should be submitted to the Court; and where a landlord sells up a holding without saying at once that it is a holding at a fixed rent he withholds information which to all intents and purposes it is material that the Court should know; where for instance a holding at a fixed rate of rent is sold as an ordinary holding, the judgment-debtor will have the right to have the sale set aside. Some words fell from the Hon'ble Mr. Reynolds with reference to tenures in Shahabad. I am opposed

1885.]

[*Mr. Gibbon; Mr. Reynolds.*]

to the section under which the 20 years' presumption is allowed, but I have no hope of altering it after the declaration which has been made; therefore I must assume that that section holds good in the Bill. If the Council would refer to the Administration Report of the Bengal Government for 1883-84, it will be found that the Government admit that under the provisions of that section *guzáshtadári* tenures are increasing, and that rights are being acquired under it; and I maintain those who are acquiring those rights never had any right to acquire such under any law, and if the provision is maintained in its entirety the consequences will be litigation and ruin to the *zamíndár*. With reference to the words I proposé should be added to the section, I maintain no distinction should be made between occupancy-tenants; that the fact of an occupancy-tenant having acquired a right to hold at fixed rates should not give him a right to hold his land in a manner not permitted to the ordinary occupancy-*raiyat*; that the purpose for which he acquired the land should alone be taken into consideration; that no tenant, whether holding at a fixed rent or otherwise, has a right to use his land in such a manner as to render it unfit for the purpose of the tenancy. He should not be allowed to use it for building purposes or other purposes not contemplated when the land was made over to him. The section, as it stands, will allow him to destroy it with impunity."

The Hon'ble MR. REYNOLDS said:—"I cannot help thinking that the hon'ble member has somewhat overlooked the wording of the section. The section refers to *raiyats* with fixed rates of rent in perpetuity, but he seemed to understand it to extend to every *raiyat* who might choose to set up a claim to hold at such rates. I cannot see that that is at all the meaning of the section. The amendment would confine the right of transfer to those who hold under *mukarrarí* leases or judicially declared titles. If this change were made it would have the effect of excluding those who, if their titles were tried, would be found entitled to hold at fixed rents under this section; and by excluding them it will place them in a worse position than they occupy now—in a position to which the Act should not reduce them. There is a very large number of *raiyats* who practically hold at fixed rates of rent, but whose title has never been tried, because they have not been taken into Court, and whose rights have not been questioned, because they have been tacitly acknowledged. But the amendment really goes very far to bring these men down to the status of mere occupancy-*raiyats*. Therefore, so far from checking litigation, the amendment would more probably have the effect of promoting

it. It is no doubt quite true that in cases of transfers of holdings where there is a doubt as to the character of the occupancy the right to hold at fixed rates will be claimed, and that the landlord will dispute the claim, and thus the question will be raised; but I think it would be better that such questions should be raised and decided. Then, with regard to the second part of the amendment. I should be sorry to see the words introduced, because I understand that the recognized status of a raiyat holding at fixed rates of rent is for all practical purposes that of a tenure-holder and not of a raiyat. You may trust him perfectly well not to use the land in such a manner as to render it unfit for the purposes of the tenancy. His interest is very much against his doing so. He may use it for a purpose incompatible with the purpose for which it was let to him, but I really do not see why we should interfere so long as the security for the rent is not endangered. If the hon'ble member had worded the amendment so as to show that it is the duty of a tenant at fixed rates of rent to use his land so as not to injure the landholder's security for his rent, although I should consider the amendment to be unnecessary, I should not have objected to it. But as the amendment stands the clause would have the effect of harassing and molesting the tenant, and I therefore trust the Council will not accept it."

The Hon'ble SIR STEUART BAYLEY said:—"I shall be very glad to leave the defence of this section in the excellent hands of my hon'ble friend Mr. Reynolds, for when this proposal was first made I voted with the Hon'ble Mr. Gibbon in the minority. The question was very fully considered by the Committee, and the opinion of the majority was that which has been just explained by the Hon'ble Mr. Reynolds. They thought it would do more harm than good to divide tenants at fixed rates of rents into two classes—one which had documentary proof of its title, and the other the proof of whose title had not been submitted to the Courts. It was thought that whatever difficulties there might be in the way of ascertaining what the various rights were, though they may be brought to the front by the new law, yet they exist no less really at present under the old law, and a proposal such as this would have the effect of further weakening the rights of those who are least able to prove their rights. The Select Committee having arrived at this conclusion last year, and having again adhered to it this year, I am not willing to ask the Council to swerve from it."

The amendment was put and negatived.

1885.] [*The Mahārājā of Durbhunga; Babu P. M. Mukerji; Mr. Quinton.*]

The Hon'ble the MAHĀRĀJĀ OF DURBHUNGA by leave withdrew the following amendments:—

That in section 20, sub-section (1), line 1, for the word "person" the words "resident cultivator" be substituted.

That to sub-section (4) of the same section, the words "when the landlord has recognized such joint tenancy" be added.

That for the word "co-sharer", wherever it occurs in the sub-section, the words "member of a joint undivided family" be substituted.

That sub-section (7) of the same section be omitted.

The Hon'ble BĀBŪ PEĀRĪ MOHAN MUKERJI moved that sub-section (7) of section 20 be omitted. He said:—"Contrary to all rules of evidence, it places the burden of proof on the wrong party. When the question is whether a raiyat has been in possession of land in a village for twelve years, he is the proper person to prove his allegation by the production of his rent-receipts. His landlord, if an auction-purchaser, would have no means of proving the negative and rebutting the presumption which the law will raise in favour of the raiyat. Even if he be not an auction-purchaser, his difficulty would frequently be great. His collection-papers alone would be wholly insufficient to rebut the presumption. They are at best only corroborative evidence. It is on the evidence of his gumāshta or collecting agent that he must rely in such case, but it is well known that in no class of servants are there greater changes by dismissal and otherwise than in the collecting agency of landholders. The landholders would, therefore, be virtually unable in most cases to rebut the presumption, although it be contrary to fact."

The Hon'ble MR. QUINTON said:—"The hon'ble member began his speech with the enunciation of the very general proposition that nothing would be easier than for the raiyat to prove possession for 12 years. It would be in the recollection of the Council that in the debate on the introduction of the Bill the Hon'ble Mr. Evans used some very striking arguments to show that it would be utterly impossible for the bulk of the raiyats to prove 12 years' possession. He quoted a letter from a zamīndār stating that the occupancy-right of the raiyat was a moral right, but it was only a moral right; therefore, I think the statement of the hon'ble mover of the amendment as to the extent to which the raiyats can prove their claims must be taken with great caution. On the one hand, we know that the bulk of the raiyats had a right of occupancy.

Our lamented colleague, the late Hon'ble Kristodás Pál, distinctly admitted that 90 per cent. of the raiyats possessed the right of occupancy. On the other hand, the Council had heard from the Hon'ble Mr. Evans that most of these men were unable to prove the right they possessed. Unless it was shown that a man had not been in possession for 12 years, it should be presumed against the landlord that he had held for 12 years. It was very distinctly stated by the hon'ble member in charge in his introductory speech that this was quite in accordance with the facts. But the hon'ble mover of the amendment asserted that this section threw on the zamíndárs a burden which they were unable to discharge, inasmuch as it would require them to prove a negative. He assumed that every tenant in Bengal got rent-receipts, which he preserved. I doubt whether all raiyats do get receipts for the rents which they pay, and, if they did, they are not in the habit of preserving papers. He assumes that an ignorant raiyat, who pays a yearly rent of Rs. 5, is in a position to prove facts which his zamíndár, who has an office connected with his zamíndári, is unable to prove. That seems to me a very bold assumption to make. Moreover, the zamíndár has not to prove that the raiyat has not been in possession for 12 years; he has only to prove that he came into possession within the last 12 years, which his records would easily enable him to do. As to the argument brought forward with respect to auction-purchasers, when we come to deal with the rights of millions of raiyats, I do not think the question of some hundreds or thousands of auction-purchasers not being able to ascertain who are, or who are not, occupancy-raiyats should be allowed to weigh against the rights of the whole body of raiyats. I must therefore vote against the amendment."

The Hon'ble MR. EVANS said :—"I would refer to the remarks I made on the subject when the Bill was referred to the Select Committee. There is no doubt that the rule as 'onus' of proof should not be altered without some good reason, but there are very many cases in which the special rules had been introduced by Courts of Equity, such, for instance, as the case of young men of expectations dealing with money-lenders with regard to reversions. When Courts of Equity have found it impossible to do justice without reversing the rules of presumption, they have shifted the burden of proof; therefore, although it is undesirable to reverse the rule in ordinary cases, I cannot admit that to do so is necessarily wrong. Now, with regard to the general position of the raiyats, they are not in a position to meet the cost of litigation. They are very ignorant, and are not able to obtain competent legal advice; they have no means to prove their possession of a particular plot for 12 consecutive years

1885.]

[*Mr. Evans.*]

beyond the oaths of a few of their neighbours; and mere oral evidence of that class is worth very little. With regard to the zamíndárs, they have far better evidence available. They can give the direct oral testimony of their gumáshtas and zamíndári servants, and what their agents depose to could be corroborated by carefully preserved collection-papers in their sheristas. This includes measurement-papers, showing the plots and boundaries, the jamá-wasil-báki papers, showing the areas and the rents the raiyats paid, and so on; and there is no doubt that the possession of such records renders the proof comparatively easy. It was said that the raiyat on his part might produce rent-receipts; but, apart from the fact pointed out by the Hon'ble Mr. Quinton that in many cases the raiyat does not get receipts, where he does get them, their value is next to nothing, because nothing whatever is stated in them except the name of the raiyat and the payments made, without any reference to the land which he holds; therefore he is not in a position to prove his statement that he held a particular piece of land for a particular period by rent-receipts. The point on which the presumption was to arise was very narrow. It was at first proposed that there should be a general presumption that the raiyat is an occupancy-raiyat, but it was pointed out that that would require the landlord to rebut a very large number of possible circumstances; that the raiyat would not have to disclose what it was in respect of which he made his claim; and that the landlord would have to disprove his claim in respect to every cottah of land in that village for the last 12 years. And, had the word 'estate' been put in and the presumption made applicable to the estate, the result would have been no doubt ridiculous, and the clause would have deserved the strictures which the learned Chief Justice had passed on it. The presumption had therefore been carefully limited to the particular piece of land in dispute. When he showed that he held that particular plot as a raiyat, it would be presumed as between him and the person to whom he paid rent for it that he held that land or some part of it for 12 years. Now, who was the person who could best prove whether the raiyat held a particular piece of land for 12 years? I say certainly the zamíndár with his records, if properly kept, could easily show that. The man who had records and the means of proof should be obliged to produce the proofs in such cases. As a matter of fact the bulk of the cultivators were permanent cultivators and cultivated the same lands year after year, and it was not a violent thing to say that they should be presumed to have held their land for 12 years until the contrary was shown. That being so, and admitting a certain amount of hardship with regard to the auction-purchaser, it was thought that some remedy of this kind was desirable to give real effect to the

[*Mr. Evans ; Mr. Goodrich ; Rao Saheb V. N. Mandlik ;* [4TH MARCH,
Mr. Reynolds.]

occupancy-right. Unless the auction-purchaser gets the village-papers from the old proprietor, which very generally he is unable to get, he is unable to find out what the raiyats' rents were, and he is obliged to apply to the Collector to have a measurement, to make a record of what the rents are. No doubt, there are not the same reasons for throwing the onus on the auction-purchaser to disprove the existence of occupancy-rights. But the auction-purchaser has always been beset by difficulties of proof, and unless a particular exception be inserted for his security I do not see that he would have any other remedy than what he now possessed, and which this Bill gives him in a more workable form, namely, to apply to the Collector for a measurement and record-of-rights. And I admit that this presumption will operate somewhat hardly upon him; but he is a speculative purchaser, who buys with full knowledge of his position, and has many advantages in other ways and considers the advantages and disadvantages, and regulates his bids accordingly."

The Hon'ble MR. GOODRICH opposed the amendment.

The Hon'ble RAO SAHEB VISHVANATHA NARAYAN MANDLIK said:—"I think the amendment is a proper one. The presumption created by the Bill is a new presumption, and Mr. Justice Field has in the minute before the Council said he could not conceive anything more dangerous than the presumption it is proposed to create. Mr. Dampier, formerly a Member of the Board of Revenue, has said that, on the whole, he would reject the presumption created by the Bill, and Mr. Field says that the effect of section 26 (2) taken with section 25 would be in a very short time to transfer the real ownership of the land from the zamindár to the raiyat. With regard to auction-purchasers it was quite the other way."

The Hon'ble MR. REYNOLDS said:—"I cannot support the amendment. After the speech which the Council has heard from the Hon'ble Mr. Evans, I was somewhat surprised to hear the last speaker say that the presumption is a wrong one to make. I venture to think that Mr. Field has not correctly apprehended the purport of the section. The presumption seems to me a perfectly reasonable one to make, because it is in accordance with the evidence, and cannot be said to shift the burden of proof to the wrong party. The raiyat has not the means of proof; he does not, as a rule, get receipts for rent, and when he gets them he does not keep them. This is a case in which the raiyat needs the protection which this clause gives him, and the interests of the small class of auction-purchasers cannot be considered against the interests of the very large body of raiyats. Where a record-of-rights has been established—and the Government

1885.]

[Mr. Reynolds; Mr. Hunter; Mr. Amír Alí.]

of Bengal hope to establish it throughout Behar in the course of a few years—the presumption will not be necessary. The village-records will afford conclusive evidence on the point. But, till such a record is established, I think this presumption is suitable to the circumstances of the case.”

The Hon’ble Mr. HUNTER said:—“I also think the presumption is in accordance with the facts. A vast majority of raiyats at present enjoy the occupancy-right. It is admitted on the part of the zamíndárs that nine-tenths of the raiyats of Lower Bengal and Behar possess that right; I think, therefore, that to give this presumption merely places the law in accord with the actual state of things in the provinces to which this Bill will apply.”

The Hon’ble MR. AMÍR ALÍ said:—“My hon’ble friend Mr. Evans has clearly pointed out the reasons for the retention of this presumption. But I entertain such a strong conviction regarding this question of principle, that I desire to say a few words to supplement the remarks which have fallen from the Hon’ble Mr. Evans. It seems to me that the argument which the hon’ble mover of the amendment has brought forward regarding the ability of the raiyat to establish his status can hardly be intended to be accepted seriously by this Council. Any one who has seen the receipts which are given to these raiyats will know exactly the situation in which these men are placed. Your Excellency has already heard what particulars are generally contained in these receipts, and the Council can easily imagine from these circumstances whether the raiyat is in a position to establish the fact which he is required to prove. The landlord has the jamá-wásil-báki, the jamábandi and other village-papers in his hands to establish his allegations. It has been stated that the zamíndár’s ámlá are frequently changed. It may be so in some cases; but it seems to me that very little force is to be attached to that portion of the argument. When one considers that not only are the zamíndári records in possession of the landlord, not only are the papers of the gumáshta and other officials under his control, but that the raiyats are, from the helplessness of their position, absolutely unable to produce any satisfactory evidence, one feels that the presumption in question is based on considerations of justice and expediency. When one considers that the great bulk of raiyats are utterly ignorant of their own rights, illiterate, and unable to know the nature of the receipts which are given to them, it seems to me that to call on them to prove their position and rights is to ask them to do something which they cannot possibly do. This is only a presumption, and, if the evidence on the other side establishes a *prima facie* case that

[*Mr. Amr Ali; Mr. Gibbon; The Lieutenant-Governor.*] [4TH MARCH,

the raiyat does not possess the status in dispute, the onus will of course then be cast on the raiyat to establish his case. It can hardly be said that this is a perversion of justice and of every right principle to give this fair and just presumption to the raiyat. I therefore oppose the amendment."

The Hon'ble MR. GIBBON said:—"It has been admitted by hon'ble members of this Council that before we change the law we must prove the necessity for so doing, and we have the high authority of the Chief Justice for saying that in providing this presumption we are making a very great change in the present law, and I deny that its necessity has been proved. It has been stated that although we are changing the law we are making this provision in the Bill in accordance with facts. The Hon'ble Mr. Quinton has laid stress on the difficulties raiyats at present have under the present law in proving their occupancy-rights in their land; but he has omitted to make mention of the enormous changes we are making in the law under the Bill. Under the present law the raiyat has to prove his right of occupancy in every piece of land he holds; if he has been shifted from field to field he must fail to prove his right; whereas under the Bill it is declared that if he has held any land for 12 years in a village he will have occupancy-rights in all the lands he may hold in the village. I deny that the necessity to change the law has been proved. It has been stated that the onus of proof should be cast on the person best able to prove the facts, and that the landlord is in a better position to rebut the presumption from his papers than the raiyat; but the jamabandi papers of the landlord show everything but the one thing required. They show the area of the holding and the rent annually payable, but they do not show, nor will they show in the future, how and when the raiyat acquired the land. It has been stated that the raiyats do not receive proper receipts to prove their rights, but on this point also we are changing the law. We are compelling the landlord to keep counterfoil books and are providing penalties for not granting proper receipts, and these receipts will in the future be sufficient evidence of the raiyat's rights. I deny that the case has been proved."

His Honour THE LIEUTENANT-GOVERNOR said:—"I do not wish to prolong the discussion. It may be that the presumption is favorable to the great body of the raiyats in the country. But that there is nothing improper, irregular or anomalous in the presumption made in the Bill has been clearly shown by the arguments adduced by the Hon'ble Mr. Evans. With regard to the auction-purchaser there has always been a difficulty, but it seems to me that where a very large proportion of the raiyats are admitted to be raiyats with the right of

1885.] [*The Lieutenant-Governor; Sir S. Bayley; Mr. Ilbert.*]

occupancy, and where the number of auction-sales is infinitesimally small, there is no sufficient ground for a change in the rule. Further, it is beyond question that if the raiyat requires protection from any one it is from the auction-purchaser who comes in to try to make as much as he can out of the estate. On every ground I think the Council is right in maintaining this section."

The Hon'ble SIR STEUART BAYLEY said:—"After the exhaustive discussion which this subject has received, I do not wish to take up the time of the Council by any lengthy remarks. But I feel very strongly that a real necessity exists for this presumption, and I cannot pass by in silence the statement made by the Hon'ble Mr. Gibbon that the receipts which the raiyats receive are sufficient to enable him to prove the occupancy-right. They do not give the boundaries of the holding, and the objection which I have all along understood the hon'ble mover of the amendment has to the provision that the receipt should give the boundaries is evidence of the fact that at present receipts do not give boundaries: all that is stated in the receipt is the amount of money received and the time for which it has been received. I have always understood him to assert that this is sufficient. But he now says that the rent-receipts prove the raiyat's position; if so, then the receipts should give the boundaries. As an additional argument against throwing on landlords the burden of proof whether the raiyat has or has not held for 12 years we are told of the extraordinary rapidity with which the zamíndár's servants disappear; he says they seldom remain in service more than a few years; sometimes the servant dies, sometimes he is dismissed, sometimes he disappears. Now I do not understand that they are exposed to any unusual mortality, and if they are frequently dismissed it points to what is really at the bottom of most of the rent difficulties in the country, namely, that the zamíndárs entrust a most difficult and delicate duty to a class of men who are unfit, underpaid and dishonest. A reform in this respect would do the zamíndárs more good than any amount of legislation. I quite understand what the Hon'ble Mr. Gibbon says with regard to the inability of the zamíndár to prove when a raiyat comes in; still if a man has come within the last 12 years, there can be no difficulty in showing it. That will rebut the presumption, and there will be an end to it. But the hon'ble member says that the Bill before the Council provides for the grant of real and efficient receipts, and that this will do away with the necessity of the presumption. We are certainly trying to do so, but it is one thing to provide for this in a Bill; it is quite another to have it universally put in practice."

The Hon'ble MR. ILBERT thought that, for the reasons stated by the Hon'ble Mr. Evans, who spoke with intimate practical knowledge of the sub-

ject, the presumption ought to be given in the limited form proposed by the Bill. It had been already pointed out that the criticisms of the learned Chief Justice were based on a misapprehension of the scope and intention of the provision under criticism, and the weight of the arguments directed against it by the Hon'ble Mr. Justice Field was materially lessened by the omission of the word "estate".

The amendment was put and negatived.

The Hon'ble MR. REYNOLDS then moved that in sections 20 and 21, after the word "village", wherever it occurs, the word "estate" be added; also that after section 21 the following proviso be added:—

"Provided that, where an estate extends over more than one parganá, the estate shall be deemed to include only so much of the estate as is comprised in the parganá in which the land held by the raiyat is situated."

He said:—"This amendment is intended to restore, with some modification, a provision of the Bill which received the approval of the Secretary of State, which formed part of the Bill as introduced into this Council, and which, after full discussion by the Select Committee, was deliberately retained in the Bill as re-published last year. Throughout all these stages of the measure the principle was accepted that the occupancy-rights of the settled raiyat should extend over all lands held by him in the village or estate. So important did the Secretary of State consider this principle that he was careful to point out to the Government of India that its legislation must provide that the estate should remain unimpaired, and that the right should not be defeated by any sub-division of the estate. In other words, he intended the estate to be the entire estate as fixed at the Permanent Settlement, and nothing less. At the eleventh hour, and in my opinion most unfortunately, the Select Committee struck out the words relating to the estate and limited the right to the village alone.

"The grounds on which the majority of the Select Committee made this change were explained by the hon'ble member in charge of the Bill in the speech which he made at the beginning of this debate. The reasons may, I think, be fairly summarised under the following heads,—*first*, that the retention of 'the estate' is unfair to the landlord; *secondly*, that the prescriptive rights of khúdkhást raiyats never extended further than the village; and *thirdly*, that the change will not practically work any substantial injury to the raiyat.

"As to the first point, I must own I have little sympathy with the feeling which would restrict the growth of the occupancy-right in the interest of the

1885.]

[*Mr. Reynolds.*]

landlord. The occupancy-right is nothing more than a right to pay regularly a fair and equitable rent; and I have not the least doubt that, in the long run, a proprietor would be the gainer by having every one of his tenants an occupancy-raiyat. But I am well aware that the landlords do not share this view, and I admit that it is reasonable that the landlord should have an opportunity of knowing something of his tenant, and that, if the privileges of a settled raiyat extended to the whole estate, cases might occasionally occur in which a proprietor might admit a tenant to occupation under the belief that he possessed no right of occupancy, and the tenant might then turn round upon him and claim a right of occupancy on the ground of his having previously held land in another village or tenure of the same estate, though under a different landlord. Such cases, I say, might occasionally happen; but the chance of their happening has been greatly exaggerated. They might happen on a few exceptionally large estates, such as the estates of the Mahárájá of Burdwan or the Mahárájá of Bettiah. But the hon'ble member in charge of the Bill, spoke of raiyats acquiring occupancy-rights in villages of the same estate twenty miles apart, as if such cases were or could be at all common. But what are the real facts? Out of all the estates in these Provinces, 89 per cent. are petty estates of less than 500 acres, which is very little more than the average size of a village. In 89 cases out of 100, it is much the same thing to the landlord whether the estate or the village is declared to be the limit, though it is a very different thing, as I shall presently show, to the tenant. I therefore hold that, if no middle course could be found, and it was necessary to choose between the village and the estate, the Select Committee ought to have adhered to the original Bill. In the vast majority of cases this would involve no possible hardship to the landlord; in the few remaining cases the hardship would be of the most infinitesimal kind—the hardship of the proprietor finding that he had got an occupancy-raiyat instead of a non-occupancy-raiyat for his tenant—a very good thing, in my opinion, for both the parties concerned.

“Secondly, it is urged that the village, and not the estate, was the limit of the old right of occupancy; and this is no doubt perfectly true. The khúdkhást raiyat was the cultivator of the lands of the village in which he lived. But to make this argument valid we ought to be able to restore the village as it existed at the time of the Permanent Settlement. But this we cannot do, and the Bill proposed to take the survey village, that is to say, the village as it existed 45 or 50 years after the settlement. But this is a totally different thing; and we have evidence to show that the survey village must comprise a much smaller

area than the village over which the old occupancy-right extended. The increase in the numbers of the people, and the extension of cultivation, have led to a marvellous growth in the number of villages. The present number of villages in Bengal and Behar is by the latest returns 194,701; the number ten years ago, in 1874-75, was 142,339—an increase of more than 5,000 villages per annum. Unfortunately, we have not, so far as I know, any complete figures of the number of villages at the time of the Permanent Settlement. But, for a number of districts, we have the quinquennial papers filed by the zamíndárs under Regulation XLVIII of 1793 and Regulation VIII of 1800; and, in a few cases, it so happened that these papers give the number of villages in some parganá of six districts of Bengal and Behar. I have referred to these papers and have compared the number of villages with the number ascertained at the survey, nearly 50 years later. The general result is that, except in a few cases, in which the quinquennial papers show kismuts or hamlets as separate villages, the survey villages show a large increase of number. Thus, in parganá Mehar, in Patna, the quinquennial papers give 264 villages; the survey found 331. In parganá Moonair, in the same district, the quinquennial register shows 53; the survey shows 321. In parganá Sasseram, in Shahabad, the quinquennial number of villages is 896; the survey number is 1,328. In parganá Jellamootta, in Midnapur, the respective numbers are 141 and 174. I do not wish to attach undue value to these quinquennial registers. They are merely papers filed by the zamíndárs, and they possess no definite authority. But on this point they furnish the best information I have been able to obtain as to the state of things 80 years ago; and this information leads us to what was *à priori* a probable conclusion, that the number of villages at the time of the survey was considerably greater than the number at the time of the settlement, and that, consequently, to give the settled raiyat occupancy-rights over the survey village is by no means to replace him in his old position in which his rights extended over the village as it existed in former times.

“Thirdly, it is contended that the rule laid down in the Bill can work no practical injury to the raiyat. If I were once satisfied on this point, I should not care to trouble the Council further on the question. But it is just because it seems to me that there is a real danger in this matter to the raiyat, that I am anxious to press the acceptance of this amendment on the Council. The landlords are impressed, I can hardly say why, with what I can only describe as a morbid horror of any extension of the right of occupancy; there is no device to which they will not have recourse to prevent its accrual, or to destroy it where it exists. It is the duty of the Council to see that the principle which

1885.]

[*Mr. Reynolds.*]

the Bill lays down is not expressed in such language as to allow of its being defeated or evaded by acts which contravene its spirit. The hon'ble member in charge of the Bill admitted that this might occur in exceptional instances in which a landlord had several villages in his own direct management within reach of the cultivator's residence, but he contended that the number of landlords in that position is very small, and that very few tenants could be affected by it.

" But this inadequately represents the extent of the danger. It is not at all necessary that the landlord should have several villages under his own direct management. It is true that the area of the average village does not greatly differ from the area of the average estate, but it does not follow that the boundaries of the estate and of the village will coincide. The cases are extremely numerous in which an estate or a tenure lies partly in one village and partly in another. In all these cases, tenants whose holdings lie anywhere near the village boundary will be harassed and molested with the object of driving them across the line and thus breaking down their occupancy-rights, and non-occupancy-tenants will in the same way be shifted about in order to prevent the accrual of the right.

" This is a real and very serious danger, and the case which it represents is by no means exceptional. The landlords who could exercise such oppression might be reckoned by the thousand, and their tenants by the ten thousand. I therefore think that the Government of Bengal would have been justified in asking the Council to restore the wording of the original Bill. But I have already admitted that there are some large estates in which it would be unreasonable to require that the right of occupancy should extend over the whole estate. The Government of Bengal has therefore considered whether any middle course can be found, and any plan devised which would obviate the danger to which I have referred, without leaving the landlords any reasonable ground of complaint. Such a middle course will, I believe, be found by restoring the old definition, but at the same time limiting it by declaring that where the estate consists of more than one parganá the occupancy-right of the tenant shall not extend beyond that parganá in which his holding is situated. This accordingly is the amendment which I now ask the Council to accept. The parganá or fiscal circle is a definite and well-known area. For the purposes of this section it seems better than the tháná or the sub-division, as its boundaries are fixed and unalterable, and there is no doubt or difficulty in determining to what parganá a given piece of land belongs. The average parganá is no doubt larger than the average estate, but it is not the average estate which we

have to consider in dealing with this question. In an average estate—an estate below 500 acres—there would be no hardship to the landlord in saying that the occupancy-right shall extend throughout the estate, as in such an estate the landlord might fairly be presumed to be able to know all his tenants. What we have to consider is the exceptionally large estate, and such estates extend over many parganá, and in some cases over more than one district. For such cases it seems to me that the parganá limit will fairly and sufficiently provide.

“ I need not remind the Council of the historical association of the parganá with questions of tenancy and rent. The existence of the parganá as a fiscal unit was recognized in the old law which made the established rates of the parganá the rates at which pattás were to be granted to the raiyats. The parganá has as real an existence and as definite an area now as it had then. The records of the Survey Department and of the Boundary Commissioner’s Office will supply the Courts with a secure guide in the application of the rule if the Council should think fit to adopt it. I think, therefore, that I may, with some confidence, ask the Council to agree to this amendment. It has been my object to show that the limitation of the occupancy-right to the village will not replace the raiyat in his old position, and will not ensure him that reasonable fixity of tenure which is intended to be given him by the Bill; whereas the extension of the rights to the estate limited by the boundary of the parganá will save the raiyat from being (in the old words of the Court of Directors) ‘improperly disturbed in his possession’, and at the same time will not involve consequences unfair to the landlords.”

The Hon’ble MR. EVANS said :—“ I do not intend to take up much time, having already made some remarks on this question when speaking on the motion for the consideration of the Select Committee’s report, but there were certain points in the remarks made by the hon’ble mover of the amendment with regard to which I should like to say a few words. The first point is the arbitrary selection of the revenue unit called an ‘estate’ as the area within which the raiyat is to have rights of occupancy.

“ It is admitted that estates are sub-divided, to a very large extent, into permanent under-tenures, and that there is no kind of connection between the raiyats of one village in one under-tenure in the estate and the raiyats in another village in the same estate situated in another under-tenure, nor between their respective landlords, the under-tenure-holders. I could have understood his argument had he proposed to give a raiyat the occupancy-right in a whole parganá. But when we come to see that the parganá has nothing to do with

1885.]

[*Mr. Evans.*]

the particular revenue unit which pays revenue to Government, and that one tenure-holder has nothing to do with another tenure-holder, it is difficult to find any principle in it. Then the hon'ble member has pointed out that estates very often are not bigger than the village area; but he also points out that though, as a rule, the size of an average estate is that of an average village, yet there is no sort of connection between an estate and a village. But he seemed to justify the extension of the occupancy-right to a larger area because there are more villages now than there were at the time of the Permanent Settlement, and that the village of that time was much larger than the village of the present day. The fact that at the time of the Permanent Settlement one-third or two-thirds of the land was waste explains to a great extent the larger number of villages. But if he means it to be understood that the whole area of Bengal was covered with occupancy-rights, I say it was not so; because the large waste lands, large forests and great jungles which existed without any cultivation were not subject to any occupancy-right until reclaimed. Some of the village areas included waste lands, but there were other very large tracts of waste lands which were not included in any village area. Then, with regard to the necessity for the amendment, my hon'ble friend starts by saying that landlords have a morbid horror of the occupancy-right. But I may fairly observe that there are some persons who have a morbid horror of landlords and desire to erect unnecessary fences against imaginary dangers. I think that it is not practicable on any large scale to move raiyats from one village to another; that there are often feuds between neighbouring villages; and even where they are on friendly terms, the raiyat would still be a stranger in the village to which he is shifted. Where he is a permanent cultivator shifted from one plot to another in the same village it is different. I do not think, considering what we have done for the occupancy-raiyat, there is now real danger of his being deprived of his right to any large extent. The hon'ble member has, however, urged that the introduction of the word 'estate' had the approval of the Secretary of State. I regard with great deference any opinion expressed by so high an authority; but it is far from clear that the Secretary of State even had this scheme under his consideration or used the word 'estate' in this sense. I am strongly of opinion that with the introduction of the word 'estate' the Bill will be going to an entirely unnecessary length and adopting an unsound and novel principle. The khúdkhást raiyat's right only extended to the village of which he was a resident. I grant that the area of the village in the time of the Permanent Settlement might have been of larger extent than villages of the survey. But that change and the disintegration of village communities has been met by making permanence of cultivation instead

[*Mr. Evans ; Bábú P. M. Mukerji ; Mr. Hunter.*] [4TH MARCH,

of residence the qualification for the acquisition of right of occupancy. If my hon'ble friend insists that the right of the khúdkhást raiyat extended over a large area, then let him confine the occupancy-right to the resident raiyat. Having recognized the difference between the position of the khúdkhást raiyat of the time of the Permanent Settlement and the position of the occupancy-raiyat of the present day owing to changed circumstances, the Select Committee have, by giving the raiyat the occupancy-right wherever he has permanent cultivation, done a great deal ; and I think that there is no necessity for going further."

The Hon'ble BĀBÚ PEĀRÍ MOHAN MUKERJI said :—" I strongly oppose the proposal to introduce the word ' estate ' in sections 20 and 21 of the Bill, and I think the proviso which the hon'ble mover wishes the Council to insert in section 21 will not at all remove the strong objections which I entertain to this amendment. As has been just remarked by the Hon'ble Mr. Evans, it is often the case that some villages of an estate are let out in patní and other tenures, and therefore, if a right of occupancy, which is acquired in a village, is extended to the estate in which the village is situated, it will create very great difficulties ; and it will, as has been observed by the hon'ble member in charge of the Bill, make the objections to the presumption in section 20 much more valid. On these grounds, coupled with the reasons adduced by the preceding speaker in exposing the fallacies which underlie the arguments, which have been adduced in support of the motion, I think the amendment should be rejected."

The Hon'ble MR. HUNTER said :—" I support the amendment. The question as to the insertion of the word ' estate ' in sections 20 and 21 was very carefully discussed in Committee, and I was one of the members who desired to see the word ' estate ' either qualified or omitted, because I believed the insertion of the word, without some qualification, might be productive of hardship to the zamíndár. It is quite true, as the hon'ble mover of the amendment has said, that the number of large estates is small, but the total area represented by this small number of large estates is very great. The insertion of the word ' estate ' without any qualification would enable an occupancy-raiyat to traffic on the ignorance of the proprietor of an extensive estate situated perhaps in several districts by entering on land as a stranger and then asserting the occupancy-right. But I voted for the omission on the understanding that, if any reasonable proposal were brought forward to limit the meaning of the word ' estate ', I would give it my support. The amendment now made does not entirely commend itself to me, and I shall presently state what I think a

1885.]

[*Mr. Hunter.*]

fair proposal. I shall bring forward that proposal as an amendment, should the amendment now before the Council not be carried. In the meanwhile, I shall vote for the amendment as it stands. The Select Committee held that it would be a hardship on the zamíndár that a raiyat from a distant part should settle down on the land of a large estate, and afterwards assert a right of occupancy—a right of which the zamíndár was ignorant when he admitted the raiyat as his tenant. There are two ways of dealing with the question—either to increase the area of the village or to diminish the area of the estate. Neither of these proposals found acceptance with the Committee. My own idea is that the best form of limitation will be to strike out the word ‘estate’ and to insert words which will cover the land or tenure of the actual landlord. The word ‘estate’ means a unit of entry in the Collector’s register; what we wish to get at is the tenure or holding of the landlord immediately superior of a raiyat. When under-tenures are created in an estate, it renders it almost impossible for a large zamíndár to know what is going on in different parts of his estate, as the different under-tenures may have no connection with one another. But the landlord, or actual superior of the tenant, has in an immense majority of cases the means of knowing the class of tenant who asks for a holding. I am bound to confess that the introduction of the word ‘estate’, without qualification, might operate to the injury of the zamíndár. I was very much struck by the historical retrospect given by the hon’ble mover of the amendment in bringing forward this motion, and the evidence which I have myself collected bears him out in what he said about the sub-division of villages. A village has been subdivided not merely by the reclamation of new land, but also by various contingencies. The chief reason, however, why a residentiary village should no longer be taken as the unit for the exercise of the occupancy-right is not the sub-division of villages, but the sub-division of estates. Sub-division has been going on for a very long time, and, as a matter of fact, I believe there is a risk that in some cases the tenant who tries to enforce his occupancy-rights in a village will find it divided between several landlords.

“ I agree with the Hon’ble Mr. Reynolds that there will be a danger of the raiyat being shifted beyond the boundaries of the village into another part of the estate not within the village. It seems to me, however, that there is also another danger. The raiyat has not merely the ordinary risk of being shifted from one village to another; he has also to contend with the distinct animus on the part of a zamíndár, whose interest it will be to prevent him from obtaining the right of occupancy, and who will try to shift him from one village to another. I do not share in the opinions of those who think that zamíndárs, as

[*Mr. Hunter ; Mr. Gibbon ; The Lieutenant-Governor.*] [4TH MARCH,

a rule, have behaved badly to their raiyats. I admit that the difficulty mentioned by the Hon'ble Mr Evans is a true one. Not only are estates large, but they are also sub-divided, and there is the difficulty that the tenure-holder may not know the rights pertaining to the man who settles on his land. But I think it has been shown by the Hon'ble Mr. Reynolds that this danger is small as far as the landholder is concerned, while the risk is very great as far as the tenant is concerned. For these reasons I support the amendment. But if the amendment is not carried, I shall ask leave to move an amendment with the view of substituting the permanent tenure of the landlord for the word 'estate'. I am not aware whether it is in accordance with the rules of the Council to move an amendment upon the amendment. I shall ask Your Lordship to decide whether I shall be in order in doing so."

The Hon'ble MR. GIBBON said:—"I will not go very deeply into this matter. The Hon'ble Mr. Evans and other hon'ble members who have preceded me have already said all I had to say, or could say, on the subject. I will only say that I was among the number who would have been glad to see the area within which the occupancy-right would be allowed to accrue extended. But I admit all the difficulties in the way of allowing this which were found by the Select Committee. With reference to the specific amendment before the Council, that the limit of the estate should be the parganá, I can only say that I manage one estate within one parganá which consists of 1,100,000 acres. The proposal of the Hon'ble Mr. Hunter creates great difficulty in my mind. There are two classes of tenure-holders—one permanent, one temporary. The tenure-holder who has only a temporary interest in his tenure may be constantly shifted, and therefore the area within which the raiyat may one day acquire the occupancy-right may not be the same area the next day."

HIS HONOUR THE LIEUTENANT-GOVERNOR said:—"I am bound to say a few words with regard to this question, which underwent long and serious discussion in the Select Committee; but the revival of the question in Council has been at my instance, because I could not help feeling that the principle which is involved is of very great importance and should be brought before the Council for consideration. The Hon'ble Mr. Evans the other day said that in regard to this matter the word 'estate' had been introduced at the instance of the Bengal Government. I wish to plead not guilty to that charge because, if I remember rightly, the proposal formed part of the suggestions in the despatch of the Government of India to the Secretary of State three years ago, and eventually received his approval. Now, of course, I understand

1885.]

[*The Lieutenant-Governor.*]

that the Secretary of State, in giving his sanction to the inclusion of the word 'estate' in connection with this section, might have been misled, as probably many other mistakes have been made in considering analogies between estates and holdings in England and in this country, in the thought that an estate in India meant very much the same thing as an estate in England. The objection which has been taken is that an estate in India comprises very many large subordinate tenure-holders, who are practically as much landlords as the superior landholder himself. The position has been rightly explained both by the Hon'ble Mr. Evans and the Hon'ble Peári Mohan Mukerji, who have shown that where there are patnís and dar-patnís and se-patnís, carved out of the parent estate of the landholder or proprietor, as entered in the Government registers, there may be risks in giving too wide a definition which we should not incur. I fully recognise the force of that argument; but then there is a danger in the opposite extreme. The danger of limiting the position of the occupancy-raiyat to a single village lies in this, namely, the risk of the loss of his status as an occupancy-raiyat from the prevalence of the practice of the zamíndár shifting him from one holding to another. It was the common prevalence of this practice which among other causes has led to a revision of the law. And, though the Hon'ble the Mahárájá of Durbhunga insisted the other day that there was no proof of such a practice, I think he must have spoken in forgetfulness of the statement which he himself made to the Hon'ble Mr. Reynolds—when he went on deputation under instructions from my predecessor, when there was proposal to recognize occupation for three years, and not twelve years, as conferring the occupancy-right—that if that was the case, raiyats would have to be shifted from year to year to prevent their acquiring the occupancy-right. That was a clear illustration of how a large zamíndár intended to act to prevent the accrual of the occupancy-right. Now if the right of occupancy is confined to the village in which the raiyat resides, it will still be in the power of the zamíndár to turn the raiyat away from one village to another, and thereby make him lose the status, which it is one of the objects of the Bill to secure. The object and general policy of the Government of India within the last few years, as I have understood the discussions upon the subject, has been that it should be the aim of the Government to try and extend, as far as possible, the status of the right of occupancy, with a view not only to the great advantage of the zamíndár in securing a raiyat with substantial interest in the land, but also generally for the interests of the country. Now, in the Select Committee, the original proposal for the introduction of the word 'estate' was after considerable discussion rejected. There is no wish to revive that proposal; but it demands

attention, whether some modification could not be made which would still afford greater protection to the raiyat, against the danger to which I have alluded ; and I understand the Hon'ble Mr. Reynolds' proposal to-day to be that, instead of limiting the right simply to the village, it should be extended to the parganá, which is a larger area than a village. If it will facilitate the carrying out of the object of the Bill in giving better security to the raiyat in his holding, by extending the occupancy-status to the parganá, where there would still be the same rent-receiver, I think it would be an improvement upon the section as it stands ; and for my part I should be quite willing to adopt that modification. The risk of shifting the raiyat from village to village will not then be a serious one."

The Hon'ble SIR STEUART BAYLEY said :—" I am sorry I am not able to accept the amendment which has been urged upon us on the authority of the Bengal Government. I dwelt at such length in my speech on Friday last on the subject of omitting or retaining the word 'estate' in the definition of 'settled raiyat' that I don't like to go over the same ground again. Briefly, I may say that our objection to the word 'estate' as dealing with rent is that an estate might be divided amongst numerous tenure-holders of one kind or another who know nothing of one another's raiyats, and have no access to each other's papers. Therefore, in any of such cases a man might come in as a non-occupancy-raiyat and then claim occupancy-rights. I then went on to show that while there were serious objections to the retention of the word 'estate,' the advantage to be derived from its retention would of necessity be very small. Nine-tenths of the raiyats will have occupancy-rights under the Bill ; therefore there remains only the one-tenth of non-occupancy-raiyats. Out of this one-tenth there would be exposed to danger from shifting only those who were on the estate of a landlord holding two or more contiguous villages in his direct possession, from one to the other of which the landlord might have the power to shift these men. The number of landlords who have this power is small ; the number of raiyats on whom it could be exercised is extremely small. On the other hand, what is the real value of it to raiyats taking up fresh land ? It is admitted that 99 per cent. of the raiyats cannot leave their village, and therefore only the few raiyats to whom the present proposal would be an advantage would be those who would be willing to abandon their homes. But this is precisely the class who should not, we think, have the boon. Looking at the disadvantage to the raiyat and the danger to the zamíndár as in either case of very small importance, I prefer to take my stand on the ancient, historical, customary and legal rights of the khúdkhast raiyat and go no further. Now the

1885.]

[Sir S. Bayley.]

khúdkhást raiyat undoubtedly had both by custom and right the right of occupancy in any land held by him in his own village. I am first met by the argument that this proposal had been sanctioned by the Secretary of State. His Honour the Lieutenant-Governor, I think, has made an error in saying that the words 'or estate' were suggested in the despatch of the Government of India; the suggestion was not made there, but was contained in the Secretary of State's reply. How far the Secretary of State had foreseen the difficulties arising out of the sub-division of estates into numerous separate tenures I cannot say; but when we came to examine the subject we found that a single revenue-estate might be sub-divided into a dozen or more of rent-estates. Therefore, while we have narrowed the area below the limits in the Secretary of State's despatch, we have very greatly strengthened and facilitated the proof of the right within that area. Then we were told that the word 'estate' was contained in the first and second drafts of the Bill, and that only now, at the last moment, we have made a change. I must ask the attention of the Council to the real history of the case. It is true that we did not leave out the word in the second draft of the Bill, but we specially called attention to the real inconveniences which would ensue from its retention, and it was on the strength of that call that the Local Government again referred the matter to its officers; and when we found that a large number of those officers objected, we again considered the matter. The change therefore was not made in the ill-considered way which might be imagined from the speech of the hon'ble mover of the amendment, but it was done on the advice of a great number of the officers of the Bengal Government. The hon'ble gentleman has laid a good deal of stress on the argument that a landlord ought to like to have occupancy-raiyats on his estate; he admits that the landlord does not like them, but he says that that is due to the ignorance of the landlord to his own interests. But we cannot make a landlord like what he ought to like. He has an idea that, by extending occupancy-rights beyond what the old law and custom of the country grants, it trenches on his rights as the landlord. Whether the morbid horror which the landlord has is well or ill-founded, there it is, and we ought to take some cognizance of it where it does not interfere either with the stability of the raiyat or the progress of the country. Then an argument is built on my assertion that the rights of the khúdkhást are limited to the village in which he resides. If this be true, it is urged that we should give him his rights in *that* village, the village of the old khúdkhást raiyat of the time of the Permanent Settlement. But the village of the Permanent Settlement is gone, because there is now so much more cultivation. By going to the village of

the survey we are going back 30 years. The line must be drawn somewhere, and here we have an area which is definitely and finally recorded, and which is independent of any subsequent changes. I do not think we can be asked, with any reason to go any further back. I admit that the village of the present day is probably smaller than the village of the time of the Permanent Settlement, but we have much more cultivated land. The village of the present day, as far as I can make out from a statement which has been furnished to me, averages about 400 acres. I cannot say what the occupancy-raiyat's right averaged at that time; but statistics show that in Dacca the vast majority have holdings of only five bighás, and in Tipperah three-fourths of them hold on an average not more than three bighás, and in portions of Behar three-fourths hold below five bighás. The standard bighá is one-third of an acre; therefore the average area of a village is 1,200 standard bighás; and comparing the agricultural holdings of an occupancy-raiyat with the area over which he can acquire the occupancy-right, I do not think that is such a small area, and there is no real necessity to extend it. We are asked to extend the right over so much land as is within the parganá. But what is the area of a parganá? The particular estate which the Hon'ble Mr. Reynolds mentioned as one in regard to which the difficulty had arisen, and the one to which he would apply his remedy, was the estate of the Maharájá of Bettiah. The Hon'ble Mr. Gibbon had told the Council that you will find a single parganá, the very parganá in which the Maharájá has the greater portion of his estate, containing a million of acres. What possible advantage, therefore, can it be in such a case as this to withdraw the word 'estate' and put in the word 'parganá'? It will leave the question exactly as it is. That of course is an exceptional case, but it is precisely one of the cases to which the Hon'ble Mr. Reynolds thinks it might be applied. As soon therefore as we begin to test the matter we find that it does not meet the case. There are other ways proposed to meet the difficulty. One is that it should be confined to permanent tenures. That was proposed in Committee. The Maharájá of Bettiah's estate is let out on long leases which fall in from time to time; consequently the raiyat holding under the intermediate tenure-holder, as the Hon'ble Mr. Hunter proposes to amend the section, is a raiyat who has one day an occupancy-right in the whole of the parganá and another day is a raiyat in a small tenure. As the small tenure falls in, it is held directly by the zamíndár or amalgamated with another tenure; consequently the area of a tenure is constantly shifting, and how we can regulate a raiyat's right of occupancy with an area which we cannot calculate I am unable to understand. I am afraid, therefore, that the scheme, however well intended, will break down on that point. There is one other point

1885.] [*Sir S. Bayley ; Mr. Reynolds ; Mr. Hunter ; Bábu P. M. Mukerji.*]

which is worth noticing, and that is with regard to the presumption. The presumption is a fair one so long as it gives the raiyat the chance of proving his occupancy-rights in the village. It is infinitely more difficult to defend if those rights are extended to the estate. The presumption itself is an infinitely more valuable boon than the extension, and I shall consequently ask the Council to reject the amendment."

The Hon'ble MR. REYNOLDS' amendment was then put and negatived.

The Hon'ble MR. HUNTER by leave moved to substitute in the amendment just put to the Council the words "a permanent tenure of the landlord" for the word "estate".

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRÍ MOHAN MUKERJI moved that section 21, subsection (1), of the Bill be omitted. He said:—"A provision which gives the settled raiyat a right of occupancy in all land let to him will make the landholders very reluctant to let new lands to such raiyats. Such a provision would, therefore, act injuriously on the raiyats themselves. The hon'ble member in charge of the Bill expressed his wonder that the landholders should prefer to have for their tenants a body of serfs instead of a body of prosperous raiyats with substantial rights of occupancy, and my hon'ble friend Mr. Amír Alí has given to the Council, as instances of unworthy conduct, extracts from statements made by landholders themselves, showing that in certain parts of Behar landholders give short term leases and shift raiyats from one plot of land to another with a view to bar the accrual of rights of occupancy. I wish to take this opportunity of submitting to Your Lordship and this Hon'ble Council that there is not a single statement in the massive records connected with this Bill that the practice in question obtains anywhere in Bengal, and, if it obtains in certain parts of Behar, it has the justification that the interests of agriculture in that Province make it necessary to let land remain fallow after it has been cultivated for a number of years. But little blame to landholders if they have taken care to prevent the extension of rights of occupancy in land. Neither the Regulations of 1793, nor any custom which found a place in the judicial records since that year, gave a right of occupancy to any but a khud-khást-kudimi raiyat, that is, an old and resident raiyat. With all deference to the opinion of more than one hon'ble member to the contrary, I maintain, and I am prepared to substantiate the view, that Act X of 1859 for the first time

gave rights of occupancy to non-resident and such of the resident raiyats as had not acquired it by length of possession; but, while creating this new right, it expressly provided for the protection of rights of landholders with regard to lands in which the right had not already accrued; and section 7 of that Act runs thus:—

‘Nothing contained in the last preceding section shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a raiyat, when it contains any express stipulation contrary thereto.’

“Few zamíndárs would have cared to concern themselves with the growth of this right if that Act had not at the same time attached to it other substantive rights. The zamíndárs found that the law raised a presumption of fixity of rent in favour of such raiyats which they could not possibly rebut, and that it gave them a right to hold at privileged rates of rent when their rents were enhanceable. It is not in human nature that landholders should not, under such circumstances, try to protect their own interests by following a course which was not only not unworthy in itself, but also one which the legislature had specially provided for them. And yet nothing shows their great moderation in this respect more than the fact that from 75 to 90 per cent. of the raiyats of these provinces unquestionably enjoy the right at present. There is no reason, however, that, because a man has a right of occupancy in a particular plot of land, the right should extend by possession for a single day to all land that might be let to him. Such a provision will act against the interests of the settled raiyats themselves. It would also hamper the extension of cultivation and the reclamation of waste lands.

“Nothing is more true than the observations on this point contained in the dissent of my learned and hon’ble friend, Dr. Hunter, which I shall read to Your Lordship:—

‘As regards lands brought under cultivation by the landlord himself, by means of hired labour, he is in a much worse position than before. Henceforth the landlord who cuts down heavy jungle, or digs tanks, or drains swamps, at a large outlay by means of his own servants, will, under the provisions of the Bill, begin to lose the occupancy-right in the reclaimed land as soon as he lets it out to tenants. If the landlord lets the reclaimed fields to a settled raiyat of the village, the tenant acquires the occupancy-right the moment he enters on the land; if the landlord lets the reclaimed fields to any other raiyat, the title to occupancy-rights immediately begins to accrue. In no case will the landlord be permitted by special contract in his lease to bar the growth of occupancy-rights in land which he has reclaimed by his own

1885.] [Bábú P. M. Mukerji; Sir S. Bayley; Mr. Amír Alí.]

servants at his own expense. Considering the pressure of the people on the cultivated soil and the existence of large unreclaimed tracts within a few days' walk of centres of congested population, I think it impolitic to place any new discouragements on efforts to add to the cultivated land.' "

The Hon'ble SIR STEUART BAYLEY said:—"I do not propose to follow the hon'ble member in his discussion of the position of the occupancy-raiyat or that of his predecessor, the khúdkhást raiyat of the time of the Permanent Settlement, beyond saying that I dissent from the hon'ble member *in toto*. The Hon'ble Member told the Council that the khúdkhást raiyat paid the highest competition-rent; but in saying so he used an expression which had absolutely no meaning. I have no doubt that Lord Cornwallis was correct in saying that the landholder took the highest rent he could get; but while rents were regulated by custom the term 'competition-rent' did not apply at all. Nor will I follow the hon'ble member in his examination of the right of occupancy. That it meant a right to hold at beneficial rates I find no authority. Whether he was right in saying that the status given under Act X of 1859 was more desirable than the right held at the time of the Permanent Settlement I do not care to enquire, but I would ask whether the hon'ble member would deny that the khúdkhást raiyat had a right of occupancy in any land which he might hold in his own village. In conclusion, I maintain that the proposal before the Council is absolutely contrary to the whole scope and meaning of the Bill."

The Hon'ble MR. AMIR ALÍ said:—"It seems to me that sub-section (1) of section 21 is the natural consequence of the whole of the deliberations of the Select Committee with reference to the status of the occupancy-raiyat. It is a natural consequence of the determination of the Government to give to the occupancy-raiyat a sufficient amount of protection against eviction, and to give him the same security in regard to all lands held by him in the village which he possessed under the law to a specific plot of land; and it is a natural consequence of the desire of the legislature to prevent the habit of shifting raiyats which had been frequent in all parts of these provinces. In face of the evidence before the Council not only in the reports furnished by the various officers of Government but also by the Famine Commission, it will be going beyond the actual existing circumstances to say that there is no necessity for some such provision as this."

The amendment was put and negatived.

[*The Mahárájá of Durbhunga ; Bábú P. M. Mukerjí ;* [4TH MARCH,
The Mahárájá of Durbhunga ; Mr. Quinton ; Bábú P. M. Mukerjí.]

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the following amendments :—

That to section 21, sub-section (1), of the Bill, the following proviso be added :—

“ Provided that such land is not larger in area than the quantity of land continuously held by him for the last twelve years.”

That sub-section (2) of the same section be omitted.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI by leave withdrew the amendment that section 22, sub-section (1), of the Bill be omitted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that in line 4 of section 23 of the Bill, after the word “ unfit ” the words “ or permanently less fit ” be inserted. He said :—“ The object is to give the landlord sufficient protection against anything likely to permanently injure the land. I moved a similar amendment in Committee last year, but I believe that, although the Committee agreed with me in thinking that the landlord should have sufficient protection given to him to prevent the raiyat from doing anything likely to permanently injure the land, the wording of my amendment was not accepted. In any Bill of this sort, in which novel provisions for compensation for improvement have been inserted, it is only fair that some reciprocal advantage should also be given to the zamíndár. It may be the case even now that some members might find some fault in the wording of the amendment, but I do not pretend to be much of a draftsman. I dare say, however, the Council will agree to the principle that some protection at least should be given to the landlord from any act of the raiyat which is likely to deteriorate the productive powers of the land.”

The Hon'ble MR. QUINTON said :—“ I think the section as it stands gives the landlord all the protection he can reasonably claim. To say that the land has been made less fit would give rise to litigation, because it would be impossible for the Courts to determine degrees of fitness, and would make the raiyats more and more uncertain as to their position.”

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—“ For the reasons assigned by the hon'ble mover, I think the amendment a reasonable one. Some protection should be given to landholders in cases in which the raiyats deteriorated the quality of the land and lessened the letting value of it.”

1885.] [*Rao Saheb V. N. Mandlik; Mr. Reynolds; Sir S. Bayley;
The Mahārājā of Durbhunga; The President.*]

The Hon'ble RAO SAHEB VISHVANATHA NARAYAN MANDLIK said:—"I think the amendment is worthy of being considered."

The Hon'ble MR. REYNOLDS said:—"As the Hon'ble Mr. Quinton has pointed out, it will be difficult for the Court to determine what has made the land permanently less fit for cultivation. It, therefore, seems to me an unreasonable suggestion, and I should prefer to leave the section as it stands."

The Hon'ble SIR STEUART BAYLEY said:—"I think the raiyat ought not to divert the land from the purposes for which it was let, and the amendment is one to which I have no objection in principle; but I cannot support it as it stands, because no Court could judge whether land had been rendered permanently less fit. I therefore think the wording of the amendment is objectionable, and that it will lead to litigation without that litigation being of any use."

The Hon'ble THE MAHARAJA OF DURBHUNGA said:—"All that I want to place before the Council is that they should in some way recognise the principle that the landlord should be protected from any act of the raiyat which is likely to deteriorate the letting value of the land in future, and if the Council agrees to that principle I am sure the hon'ble member in charge or the Law Member might be able in a day or two to lay a better-worded amendment before the Council. When you give compensation to the raiyat for improvements, you must give some reciprocal advantages to the zamindar."

His Excellency THE PRESIDENT said that the principle of giving protection to the landlord against improper usage of the land by the tenant was generally recognised in Europe. He would, therefore, suggest that the consideration of the amendment should be postponed, or else that the section should be passed and it be left for further consideration by the Council whether in a later part of the Bill some clause should not be introduced which would give all the protection which was desired.

The further consideration of section 23 was postponed.

The Council adjourned to Thursday, the 5th March, 1885.

R. J. CROSTHWAITE,
*Offg. Secretary to the Government of India,
Legislative Department.*

FORT WILLIAM; }
The 31st March, 1885. }

*Abstract of the Proceedings of the Council of the Governor General of India,
assembled for the purpose of making Laws and Regulations under the
provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at Government House on Thursday, the 5th March, 1885.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B.,
G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding.*

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble T. M. Gibbon, C.I.E.

The Hon'ble R. Miller.

The Hon'ble Amír Alí.

The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.

The Hon'ble H. J. Reynolds.

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

The Hon'ble Peári Mohan Mukerji.

The Hon'ble H. St.A. Goodrich.

The Hon'ble G. H. P. Evans.

The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Durbhunga.

The Hon'ble J. W. Quinton.

BENGAL TENANCY BILL.

The adjourned debáte on the Hon'ble the Mahárájá of Durbhunga's amendment that in line 4 of section 23 of the Bill, after the word "unfit" the words "or permanently less fit" be inserted, was resumed this day.

His Excellency THE PRESIDENT said that, at the close of yesterday's proceedings the consideration of section 23 of the Bill was postponed, with the view of considering an amendment which had been moved by the Hon'ble the Mahárájá of Durbhunga. HIS EXCELLENCY understood that the hon'ble member in charge of the Bill thought he would be able to meet the Mahárájá's wishes.

The Hon'ble SIR STEUART BAYLEY said :—“ I propose to meet the hon'ble member's wishes in the following way, by the insertion of the words ‘ materially impair the value of the land or ’ after the words ‘ does not ’ in line 4 of section 23.

The amendment was put and agreed to.

The Hon'ble MR. AMÍR ALÍ said :—“ Before I move the next amendment, which stands in my name, I would beg permission to make an alteration in clause (a). The amendment will run thus :—

That after Section 24 of the Bill the following section be added :—

An occupancy-raiyat shall be entitled in Bengal Proper to transfer his holding in the same manner and to the same extent as other immoveable property :

- ‘ (a) Provided, however, that, where the right of transfer by custom does not exist, in the case of a sale the landlord shall be entitled to a fee of 10 per cent. on the purchase-money.
- ‘ (b) Provided also that a gift of an occupancy-right in land shall not be valid against the landlord unless it is made by a registered instrument.
- ‘ (c) The registering officer shall not register any such instrument except on payment of the prescribed fee for service on the landlord of notice of the registration.
- ‘ (d) When any such notice has been registered, the registering officer shall forthwith serve notice of the registration on the landlord.’

“ With reference to the subject of this motion, I have already pointed out the reasons which lead me to think that the excision of the transferability clauses from the Bill has been a mistake, and I do not wish to take up the time of the Council at any length in support of the contention that those clauses should be restored. I believe it has been sufficiently established that the raiyats who possess the right of free transfer are more prosperous and better able to withstand the visitations of famine and scarcity than those who do not possess that right. And I believe it has also been sufficiently proved that the fears which are entertained by some people, that if the power of free transfer is given to occupancy-raiyats, the holdings will pass into the hands of moneylenders, are in the main groundless. The information collected at the instance of the Bengal Government, I think, has established conclusively that it is not the case that where the right of transfer is exercised by raiyats their holdings pass into the hands of money-lenders ; that in the majority of instances the transfers are, as a matter of fact, made to *boná fide* cultivators ; and that wherever the right

1885.]

[*Mr. Amir Ali.*]

exists and is exercised the raiyats hold with the utmost tenacity to their holdings ; that their cultivation is better and their standard of living superior to those of other raiyats. It also, I believe, is shown upon the evidence to which I have referred that changes in the ownership of occupancy-holdings are less frequent than among the proprietors themselves. I will call one instance to the recollection of the Council, and that is the case of the guzáshtadárs of Shahabad. In view of these circumstances I would urge upon the Council the acceptance of my amendment. I know that the excision of the transferability clauses has met with the approval of the Executive Government and the high authority of Your Excellency ; and therefore in bringing forward the present motion I do so with a certain amount of hesitation and diffidence. The question, however, is one of very great importance, and my apology for urging it on the Council consists in the testimony borne by the hon'ble member in charge of the Bill himself to the prosperous condition of the raiyats who possess the right of transfer. It is said that the right of transfer would prove detrimental to the interests of the zamíndárs. With reference to that I desire to make one or two observations, and I hope they will be considered carefully by the Hon'ble Peári Mohan Mukerji. The zamíndár has been given the power of selling up an occupancy-holding in execution of decrees for arrears of rent, even when there is no right of transferability attached to the holding itself. Of course, where the right of transfer is attached to the holding, as in Bhagulpore and Shahabad, higher prices will be obtained for such occupancy-holdings. But in places where there is no right of transfer possessed by the raiyats the value of the holding will be nominal, and the price obtained will not cover the amount of arrears and the cost of litigation. Then, in the next place, we have made no change in the power of sub-letting. Well, sub-letting having been maintained without any change, it is not difficult to imagine that people wishing to buy occupancy-holdings can easily get round the provisions in the Bill against absolute transfer by simply offering a good salámí and getting the holding in that way. The very complications which the zamíndárs wish to avoid by keeping back the power of transfer will arise under the power of sub-letting. Therefore, by denying the right of transferability, by making it dependant upon custom, we have not gained much, but we have done considerable harm. I believe the Council is aware that, where the right of transferability has not been sufficiently established by long usage, a small fee is paid by the raiyat for obtaining the consent of the landlord ; not unfrequently he has to pay, besides, a conciliation fee to the ámlá. In places where the custom has been long established, where the practice has been recognized by long usage, the raiyat does not pay any fee. The question having been raised as to the right of the occupancy-raivat to transfer the

tenure, there is every reason to fear that the zamíndárs, even in those places where the right of transfer has been up to this time exercised without question, will not allow it unless a substantial portion of the purchase-money is made over to them. Whether that eventuality is one which is at all desirable I would leave to this Hon'ble Council to judge. I believe the legislature would be extremely unwilling to leave, by the excision of the transferability clauses, any such loophole which will either endanger rights which do exist and are exercised at present, or will be likely to interfere with the growth of the custom of transferability which is admittedly doing so much good towards the prosperity of the raiyat. I will only add a few words to explain the meaning of the amendment. As a matter of fact, the Council will perceive that what I ask for is the re-insertion of the clauses in the former Bill with a slight modification, namely, in clause (a). That clause did not exist in the sections which were cut out of the former Bill. My object in inserting it is to give to those landlords on whose estates the right of transfer does not exist a substantial fee by way of salámí for their consent or acquiescence in the sale. The fee they now get is a fee of an unrecognised character. By clause (a) they will get a recognised substantial fee. Of course, in places where the right is exercised now without dispute, they are not entitled to any fee, and it will not be right for them to expect any. In the second place, I confine the operation of the section to Bengal Proper. The Bengal Government in its letter of September last pointed out the reasons why it is desirable to confine the right of free transfer to Bengal Proper.

‘In Behar there are various reasons which render it expedient not to extend the right to the whole of that province independently of existing custom. I had accordingly brought forward a proposal in Committee to exclude Behar from the operation of the proposed provision to render occupancy-holdings generally transferable. That proposal was not accepted, but the Committee have since decided to omit the transferability clauses with reference to the entire province. I agree with the Bengal Government in the view that the right should be confined to Bengal Proper alone, and consequently my amendment refers to Bengal Proper alone. As for the meaning of ‘transfer’ and ‘gift,’ they are defined in the Transfer of Property Act, and for this reason I do not think it is necessary to insert any definition of those words here. I beg therefore to move that the clauses which I have read out may be re-inserted in the Bill, and the numbering of the sections be altered accordingly.’

The Hon'ble SIR STEUART BAYLEY said:—“ I have been permitted to explain

1885.]

[Sir S. Bayley ; Bábú P. M. Mukerji.]

to the Council what my own personal views are on the subject ; but as a member of the Executive Council, the Executive Council having decided that transferability of these tenures should not be accepted as a principle of general application in this Bill, it is not right that I should ask the Council to support the amendment of my hon'ble friend opposite, nor, under the circumstances, do I think that I am justified in again taking up the time of the Council in explaining why the Executive Council decided not to have it. In its present shape it is clear that the amendment is one which could not receive the countenance of the Government of Bengal, and I therefore think that any discussion on it would be of no practical value. But I would like to point out that the amendment does not provide for the great difficulty which the Government of Bengal had felt in reference to the necessity of excluding the moneylenders. The Government of Bengal, in a letter of September last and subsequent communications, remarked that, even if the right is restricted to Bengal, still they could not support it, unless it was so hedged in that occupancy-holdings should fall only into the hands of persons who derived their main support from agriculture. The motion does not meet the *sine qua non* to which the Government of Bengal insisted, nor can it be accepted without other difficulties arising. It was left, for instance by this motion, for the Courts to decide what 'Bengal Proper' was, and in the next place the registering officer would have to decide what was the custom, and whether it existed or not. With these remarks I leave the matter in the hands of the Council."

The Hon'ble BĀBÚ PEĀRĪ MOHAN MUKERJĪ said :—"When the Government of India recommended a provision for the free sale of occupancy-holdings, they were not ignorant of the possible injury which such a provision would give rise to. In their despatch to the Secretary of State the Government of India said :—

'So far we have considered the landlord's interests, but the protection of the raiyat is a matter of much greater difficulty. The moneylender by means of mortgage might appropriate the whole profits of these holdings, or by foreclosure or purchase he might be possessed of the occupancy-right.'

"The question was thoroughly discussed in Select Committee, and it was found that not only high officers of State considered it to be a dangerous provision, but that the experience which the country had obtained from the operation of such a provision in the Dekkhan and the Sonthal Parganás showed clearly that was not at all desirable. The Chief Justice of Bengal truly remarked with reference to this that he 'thought it equally true, on the other hand, that to give a poor population like the Bengal raiyats

[Bábú P. M. Mukerji ; Rao Saheb V. N. Mandlik.] [5TH MARCH,

the means of selling or mortgaging their tenures at pleasure was a certain means of making them improvident or unthrifty.' It was, therefore, in the interest of the raiyats, and not in the interest of the landlords, that this provision was abandoned by the Select Committee. The hon'ble member has stated in support of his amendment that the condition of the raiyats in places where the custom obtained was one of greater prosperity than in other places. But the question should be viewed in its proper light. In places where this custom has obtained, the institution has been brought about under the operation of the rule of the survival of the fittest. In such cases the institution must necessarily be suited to the requirements of the locality, and must, therefore, be productive of much good ; but to thrust upon a poor and improvident people the power to deprive themselves of their substance and homesteads, and of their means of living, is, I submit, not altogether consistent with the other provisions of the Bill. The Select Committee not only provided for a fee to be given to the landlord for his consent to the sale, but they also provided that the landlord could either accept the fee or veto the sale upon three grounds : *first*, that the purchaser was not a cultivator ; *second*, that he was a bad-character ; and *third*, that he was an enemy of the landlord. If the hon'ble mover of the amendment had moved an amendment for recommending the insertion of a rule for free sale with these restrictions, I would have had no hesitation in giving my support to it ; but, although I should have found no difficulty in supporting it, I should have thought it was a dangerous one in the interest of the raiyat."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said :—“ The Bill as it comes to us is the work of the Select Committee, who have carried out the wishes both of the Government of Bengal and the Government of India. I therefore think the onus is upon those who come here to advocate a change, unless it can be practically shown that the change is one for the good of the country. So far as I have followed the current of the decisions of the Bengal High Court, a mere occupancy-right does not carry transferability so far as Bengal is concerned. I think that the four corners of the present legislation are enough for our present purpose without going either to the Dekkhan or other parts of India. I think that sufficient has been conceded on the lines of the Bill as it stood. If occupancy was not transferable according to the law as it was interpreted by the High Court, and if the Government of Bengal and the Government of India thought fit that legislation should not advance further, they had devised restrictions for the protection of the public. Whether it was the landlords or the raiyats who required protection, that was hardly the place where one could now go into the question of absolute transferability. It was

1885.]

[*Rao Sahab V. N. Mandlik; Mr. Reynolds.*]

too large a question. I think that the Council should remember that if the section now proposed were introduced a very large number of sections would have either to give way altogether or would have to be further hedged in by restrictions, which I think it would be very difficult at this stage to introduce. I will, therefore, oppose the motion."

The Hon'ble MR. REYNOLDS said:— "I agree with a great deal of what has been said by the hon'ble mover of the amendment, and especially with regard to what he said as to the additional value which would be given to the occupancy-right by the concession of the power of transferability. The question has been very fully and ably discussed by Mr. Field in a note to his Digest of the Rent Law, and his conclusion was in favour of declaring the occupancy-right transferable. I must add that I cannot altogether assent to what the Hon'ble Peári Mohan Mukerji said with reference to the precedents afforded by the Sonthal Parganá and the Dekkhan. I do not think they are cases in point with reference to Bengal. The danger of giving to occupancy-raiyats the power of transferability is the fear of the lands falling into the hands of moneylenders, and this is a real danger in places like the Sonthal Parganá and the Dekkhan, where the moneylending classes are an alien race, having no community of interest with the people. We have in the Sonthal Parganá moneylenders who are Bengalis, and in the Dekkhan the moneylending class are Marwaris; but that is not the case in Bengal, and I am still of opinion that with certain safeguards the right of transferability might have been recognized in Bengal without any danger to the interests of the people. But at the same time I am not satisfied with the form of the amendment; for instance, in clause (a) it is provided that where the custom of transferability does not exist, a fee of 10 per cent. shall be payable to the landlord. Such a fee, in my opinion, is too high, and the hon'ble member has not provided for cases in which the right exists by custom subject to the payment of a fee. Then the hon'ble member proposes that a gift shall not be valid unless it is registered, but he has not provided for the case of sales being made under cover of a gift; and above all there is no provision in the amendment for ensuring that occupancy-holdings so transferred shall continue to remain in the hands of the agricultural classes. Though, I believe the danger of the money-lender's intrusion has been much exaggerated, I admit that there is some residuum of danger in connection with this matter, against which precautions should be taken, and in the present state of Bengal I should be sorry to see the right of transfer freely imported into the Act without any safeguard against the evils to which I have alluded. I therefore cannot support the amendment."

[*Mr. Hunter ; Mr. Gibbon ; The Lieutenant-Governor.*] [5th MARCH,

The Hon'ble MR. HUNTER said :—“ My Lord, I had not intended to speak on this amendment, because I am much in the position of my hon'ble friend Mr. Reynolds. I think the amendment in substance good, but I am unable to accept the form in which it is put. To my mind there can be no doubt that the evidence before this Council—evidence which has been carefully gone into by the Select Committee—has abundantly established the fact that the sale of occupancy-rights is growing into an established custom. I believe that by leaving the sale to custom we are subjecting poor men, needy men, to a number of exactions, and to a number of very serious inconveniences during the process of sale. But while I feel very strongly that it would have been a great advantage to the raiyat if we could have given the effect of law to that custom, I do not see my way to accept the amendment in the form in which it has been placed before the Council.”

The Hon'ble MR. GIBBON said :—“ Much as I desire to see the right of transferability adopted and legalized, I must oppose the amendment. While I desire to see the right of transfer legalized, I wish also to see the just interests of landlords protected, and the country protected against the evils of land-jobbing: neither this evil nor the interests of landlords are protected by this amendment. Much as I desire to see the right of transferability adopted, it should, in my opinion, be adopted for the whole province, and not for Bengal Proper alone. To legalize transferability for Bengal and not for Behar will hereafter be looked upon as having prohibited it for Behar. The hon'ble member has given many reasons for desiring to give the right of transferability, but he has given no reason which is not equally applicable to the circumstances of Behar; if they apply to the circumstances of one province, they apply equally to both. If we legalize transferability in Bengal, not in Behar, it should be by a separate Bill. I am sorry therefore I must object to the amendment.”

His Honour THE LIEUTENANT-GOVERNOR said :—“ This is an old question which has passed through several stages of consideration up to its final abandonment by the Government. The hon'ble member who moves this amendment will not doubt that, as far as my own views go, I sympathize entirely in the position he takes. The recognition of the free right of transfer on behalf of raiyats having occupancy-rights would, in my judgment, ultimately be a great benefit to the country, though I am willing to admit that, as regards its present adoption, there is no question in which my own opinion has undergone greater modification than in this one. In our first proposal to the Government of India two years ago we recommended the adoption of the right of transfer throughout

1885.]

[*The Lieutenant-Governor.*]

Bengal in the belief, which we thought sufficiently established, that the practice of transfer was generally prevalent; but later enquiries seemed to show that what might be safe in Bengal would not, under the peculiar conditions and circumstances of Behar, be safe there; and in our second letter we desired to confine the exercise of the power to the districts of Bengal Proper. But even as regards that Province the point which claims especial consideration is that the zamíndárs themselves have shown the strongest opposition to the acceptance of the proposal; and certainly I can speak from my own experience that, in all my interviews with zamíndárs on the subject of this Bill, no question has been more prominently brought forward and opposed than this one, and further that the opinions which have been expressed in non-official communications and in the writings of the Press have condemned the policy as one which is likely to be attended with serious evils in the transfer of lands from the hands of the agricultural classes to those who have no interest in agriculture. We have thus to take account of the fact that there is a strong outside hostility to the legal recognition of the right of transfer in this class of raiyats. I fully support the view taken by my hon'ble friend Mr. Reynolds that any reference to the case of the Sonthal Pargánas or that of the Dekkhan affords no parallel to the circumstances of Bengal. In the Sonthal Province there is an aboriginal people, rude, half-civilised and uneducated, amongst whom large numbers of money-lending Bengalis are settled; and to open the door to the transfer of occupancy-rights among such a people would undoubtedly lead, and has already led, to evil effects. But the parallel does not hold good where you have to deal with a people who are beginning to know the value of landed property and can use the discretion as to parting with it or not. Still after much consideration the safer view has prevailed that the introduction of any provisions like those which the hon'ble member has moved should not form a part of our present legislation; though in accepting this view we must all realize the fact that we do not thereby close the door to the growth of a system of transferability. The fact is that the practice obtains all over the country; it extends to a considerable extent in Behar; it is in increasing operation in all parts of Bengal. The fact that such transfers are taking place daily in almost every district in Bengal is one which no one can dispute; it comes before us on the unquestionable authority of the Registration Department, and is admitted by the landholders themselves. Therefore, I think it is quite our wisest course to let the practice develop itself, and in a few years it will be very much easier to recognise the practice from the fact of the custom having become established. In view of all these circumstances I would strongly press upon the hon'ble member to withdraw his amendment."

His Excellency THE PRESIDENT said :—“ As a reference has been made to my connection with this subject, I should like to have an opportunity of expressing my own opinion upon it. In the first place, we have to consider the matter from the point of view of right and equity. Sir John Shore, a contemporary authority upon the subject, has stated in the most positive manner that the occupancy-right does not include the right of sale or transfer, and the Courts of Bengal, as I understand, have hitherto maintained this view. It is therefore a question as to how far we should be justified in giving the occupancy-tenant a right carrying a money value to which he has not hitherto been entitled by law. That he should have it by custom is a totally different question. It stands to reason when a landlord has allowed such a custom to grow up, when the landlord has permitted sales of occupancy-interests to take place, it is but fair and just that the actual tenant, who has paid consideration for the occupancy-right, should be allowed to dispose of it upon the same conditions as those upon which he bought it. Without, however, wishing to pronounce dogmatically upon this part of the question, I have to observe that when the matter was brought to my notice the Government of Bengal had already decided that the legalising of the custom was at all events not desirable in Behar. It was also decided that its application to Bengal must be hedged and restricted by various safeguards, one of which consisted of the right of the landlord to bar the transfer where the transferee was objectionable to him. Thus it became apparent that even its application to Bengal might be also questioned. I can quite understand that the hon'ble member who has moved this amendment should take a different view of the question, because I believe that he is more immediately acquainted with a part of the country where the raiyats are in a very satisfactory and strong position; and undoubtedly, where that is the case, transferability is not only a convenience, but works without injury to the raiyat and with advantage to the public. But, on the other hand, we must remember that if the amendment were to be adopted we should at once confer upon vast numbers of indigent men the right and the opportunity of mortgaging the land on the unembarrassed condition of which the salvation of themselves and their families depends. However, I need not enlarge upon this view of the question, because the remarks which have already fallen from the Lieutenant-Governor I think amply justify the view which has been taken of the subject by the Government of India. I think it right, however, to say, on behalf of myself and my colleagues, that if, at this stage of the proceedings, arguments had been adduced in favour of such an amendment as that which has been proposed by Mr. Amír Alí, we should have been quite prepared to give to them that attention which they deserve. But, so far from that being the case, even those

1885.] [*The President; Mr. Amír Alí; Bábú P. M. Mukerji.*]

other members of the Council who are disposed to look with an indulgent eye upon the principle in the abstract, announce to us that they do not feel themselves in a position to support it. Under these circumstances, we—I for one, and I imagine all my colleagues—feel that there is no reason whatever why we should depart from the conclusion at which we originally arrived.”

The Hon'ble MR. AMÍR ALÍ then by leave withdrew the amendment.

The Hon'ble BÁBÚ PRÁRI MOHAN MUKERJI moved that to section 25 of the Bill the following clause be added :—

“ that he has defaulted to pay within fifteen days the amount of a decree for arrears of rent passed against him.”

He said :—“ Both the Rent Commission and the Government of India recommended the abolition of the provision for ejectment for non-payment of rent simply on the ground that it would be incompatible with the condition for free transfer of a raiyati holding ; but now that the provision for free transfer has been expunged from the Bill, I submit that the permissive provision for ejectment for non-payment of rent be inserted in the Bill. The power of ejectment has been enjoyed by landholders from 1793, and, notwithstanding all that has been said by some officers, I challenge not only strict enquiries but any reliable evidence of the fact that the power has been abused during such a long time. And when there is no evidence of that fact I submit that it will be inexpedient to deprive landlords of a right which gave them an effective remedy in cases of non-payment of rent. It acts as a threat on the raiyat against default and delay in payment of rent, and I think the power is essentially necessary to enable landlords to collect their rents with punctuality now that the provision of free sale has been done away with. It has been observed by my hon'ble friend Mr. Amír Alí in moving his last amendment that power has been given by the Bill to put up to sale a defaulting holding, but I need hardly inform the Council that it is no new power which the Bill has given to landholders ; it is a right which they have all along enjoyed but which the Committee thought was of no earthly use to them, because when a man has the choice of either putting up a defaulting holding to sale or of applying for ejectment it will be in the interests both of the landholder and the raiyat that the landholder should apply for an order of ejectment and not for sale. An order for sale involves much additional cost on the raiyat in respect of the necessary processes of Court, such as the proclamation for sale, sale-fees, and so forth, and in the majority of cases it is found, as has been justly remarked by the Hon'ble Amír Alí, that the proceeds of sale does not cover even the cost of processes. The

[*Bábú P. M. Mukerji ; Mr. Evans ; Mr. Gibbon.*] [5TH MARCH,

provision for sale as a substitute for the power of ejectment is liable to this further objection, that even when a sale has been effected it is in the power of the raiyat to apply for the reversal of the sale, and a suit to that effect may be carried on for years, and the question whether the sale was valid or whether it was invalid would not be settled till years after the sale was effected. In the meanwhile the purchaser has invested money in the land, and other rights have accrued ; and if the sale is ultimately set aside both the raiyat and the landlord will be seriously damaged. I submit that in the interests of the landlord and that of the raiyat himself, the provision for ejectment contained in the present law should be maintained.”

The Hon'ble MR. EVANS said :—“ I do not feel justified at this stage of the proceedings in supporting a motion for allowing the old form of ejectment. I always had great doubts whether the change made in the Bill would be beneficial ; but as this is one of the cardinal points in the Bill I do not think there will be any chance of the Council re-considering the matter, which has been settled and which has such great authority in its favour.

“ I entertain very considerable doubts as to its working well. I think that, instead of having to resort to these execution-processes, the landholder should be able to ask the Judge, in cases where there was no bid or an insufficient bid, to stop the sale and make the amount payable within fifteen days. I have not made any substantive proposition, because I am not clear that the relief will be sufficient to justify my introducing any amendment of that kind. I feel that there are inconveniences to the zamíndárs, and I can only hope that it will work out better than the ordinary execution of money-decrees is working in this country.”

The Hon'ble MR. GIBBON said :—“ Had the hon'ble mover accepted the suggestion I threw out to him in Committee that the order for ejectment should act as a full acquittance of the decree, I would have given him my co-operation. The hardship in adopting the old law, allowing the judgment-debtor to be ejected if he does not pay the amount of the decree within fifteen days, lies in the fact that when he is ejected the decree still holds good against him, and he is still liable to pay the full amount of the decree. I accept the provisions of the Bill simply as the better of two evils, not as an effectual remedy. The provision in the old law which allowed the zamíndár to eject if the defaulter did not pay the amount of the decree was valuable only on account of the moral effect it had on the raiyat ; and as such it was necessary, I think, to embody it in the Bill ; at the same time the difficulties in the way of transfer-

1885.]

[*Mr. Gibbon ; Sir S. Bayley.*]

bility which have been stated by the Hon'ble Mr. Evans are very true. I have often found that nobody would bid at the sale of the raiyat's holding and the holding had to go back to the same raiyat. At the same time the difficulties stated by the hon'ble mover of the amendment are also true; process and sale fees are so exorbitant that the amount realized from a sale is often hardly sufficient to cover them. The remedy lies in reducing process and sale fees and in applying a rule of percentage on the amount of the decree or the amount of purchase-money realized."

The Hon'ble SIR STEUART BAYLEY said :—" I understand the hon'ble mover of the amendment to assert that the Rent Commission originally recommended this system of ejectment on the ground that, as there was to be a free transfer of occupancy-holdings, ejectment would be incompatible with it, and he also said that the Government of India had settled it on this ground. But I must point out that this was an entire mistake. Neither the Rent Commission nor the Government of India connected it with the question of free transfer generally. What they did connect it with was the fact that sale for arrears of rent was provided, which is quite different from the question of free transfer generally; consequently the fact of having removed free transfer from the Bill makes no difference whatever in the grounds urged both by the Rent Commission and the Government. I will read what the Rent Commission said :—

As an occupancy-holding has been made transferable and saleable in execution of a decree for its own rent, the necessary consequence is that a raiyat ought no longer to be ejected from such a holding for non-payment of rent. We have accordingly enacted (section 20, clause (e)) that no raiyat may be ejected from land in which he has a right of occupancy, whether for non-payment of rent, or other cause not being a breach of a stipulation in respect of which such raiyat and his landlord have contracted in writing that the raiyat shall be liable to ejectment for a breach thereof.

And they went on to express their dislike of the system of forfeiture. I think the hon'ble member will find also that the Government uses the same language. The hon'ble member will, therefore, see that the question did not in the least depend on the question of transferability generally, but particularly whether the occupancy-right should be sold for arrears of rent or not; and, as we have maintained the process of sale, we are justified in saying that we are carrying out the views of the Rent Commission, the Government of India and the Secretary of State, all of whom have held that where we have the right of sale we do not want also the process of ejectment. At the same time I may remind the hon'ble member, as I pointed out before when the question was discussed two years ago, that though evictions through the Courts were not

frequent, yet illegal eviction was very frequent; and I at that time quoted an experienced Magistrate, Mr. Edgar, who had a return prepared of complaints preferred in his district on this ground, which amounted, if I recollect right, to some 500 in two years. The Government of Bengal had supported this statement. As a matter of fact it is not the action of the Courts in this matter which we dread; it is the threat of ejectment hanging ever over the head of the raiyat which paralyses his industry, and makes him an easy prey to extortion and oppression. It is this tremendous engine in the hands of unscrupulous subordinates which we desire to restrain. The hon'ble gentleman admits that the real use of ejectment is that it acts as a threat, and I think he said it had a very moral effect. We are agreed as to the power, but scarcely as to the moral effect, of the threat. He would wish us to believe that this power is desired in the interest of the raiyat. Such an interest I believe the raiyat and the raiyat's well-wishers would very gladly forego, but I can hardly suppose that my friend uses the argument seriously. That it is in the interest of the zamindár I can understand, and if he puts it on that ground there is a fair scope for argument; but when he claims that it is in the interest of the raiyat that he should be ejected and the surplus value of his holding and improvement should go into the pocket of the zamindár I do not understand. More especially I do not understand it as applied to the amendment in its present form. In order to give it even a semblance of fairness he should have supplied the omission which the Hon'ble Mr. Gibbon has pointed out; he has not put in any provision that ejectment in execution of a decree should be deemed to be a full satisfaction of a decree; he has left the raiyat liable for the amount of the decree even after the landlord has got the land in his own possession and has got into his own pocket the value of any improvements effected by the raiyat on the land. The Hon'ble Mr. Evans has thrown out a suggestion that there might possibly be made a relaxation in the form of the section in case of the sale of the holding not fetching the full amount of the decree. That question was brought before the Select Committee and was discussed, but I do not see any amendment on the notice-paper concerning it. I may, however, inform the Council that one of the grounds on which it was felt to be unacceptable was this, that it would make it the landlord's interest in every case to prevent the raiyat's holding being sold for anything like its full value; if he could fall back upon ejectment without compensation when the price bid was low, it would clearly be his interest to keep the price low, and a powerful landlord would have little difficulty in doing this by keeping away other bidders; but the thing which strikes at the root of the amendment is this, that it is really unnecessary: ejectment is of necessity included in sale, it is merely a question of whether improvements

1885.] [*Sir S. Bayley ; Bábú P. M. Mukerji ; Sir S. Bayley ; The President ; Bábú P. M. Mukerji.*]

should be forfeited also, for it is obvious that the landlord in the process of sale has a power of ejection; he puts the holding up to sale, and if he does not get a bid he buys it for four annas or eight annas and the man is ejected. I do not think it necessary to go beyond this. On the main question I may say that we have intentionally and deliberately restricted the power of ejection, because we think that at the best it is a dangerous power, and it has been part of the deliberate policy of the Government from the beginning of the rent question, from the despatch to the Secretary of State and his reply, to restrict ejection in every way we can. For these reasons I shall vote against the amendment."

The Hon'ble BĀBÚ PEĀRI MOHAN MUKERJI said:—"After what has fallen from the Hon'ble Mr. Evans and the Hon'ble Mr. Gibbon I wish to ask His Excellency's permission to move the amendment in a modified form, namely, that—

'Ejection under this section shall be in full satisfaction of all demands under the decree.'"

The Hon'ble SIR STEUART BAYLEY said:—"I think it is rather late in the day to raise that question now; it was raised and discussed in Committee, and the hon'ble member has deliberately moved his amendment without it. I do not think that it is quite fair to present a new amendment now in consequence of suggestions which have been thrown out in the course of the debate, but at the same time I do not wish to object to the amendment in this case being put."

His Excellency THE PRESIDENT allowed the Hon'ble Bábú Peári Mohan Mukerji to propose an amendment in the modified form, which he asked permission to do.

The Hon'ble BĀBÚ PEĀRI MOHAN MUKERJI said:—"I rely on the statements which the hon'ble member in charge of the Bill has read from the report of the Rent Commission and the despatch of the Government of India to the Secretary of State, and it was those statements which I had in my mind when I referred to those documents. The statements may be differently interpreted; but in connection with the fact that the power given to the landlord to put up to sale a holding for which rent is due is not a new power, but one which landlords have exercised since 1793, if not from an earlier date, I think that no meaning other than what I have put on it can be given. The mistake of the Rent Commission and the Government of

[*Bábú P. M. Mukerji; Mr. Evans; The Lieutenant-Governor.*] [5TH MARCH,

India lies in supposing that the power of bringing defaulting holdings to sale is a new power given to landholders. But that is not so. Then the hon'ble member has asked how the provision for ejectment can be in the interest of the raiyat. I have explained fully in the speech I have already made that when a sale is effected certain expenses must inevitably be incurred; expenses of application, expenses of proclamation, fees of sale, and so forth, must ultimately fall upon the raiyat; and if the sale-proceeds do not cover them, the landlord has the right of realization by the sale of the goods and chattels of the raiyat and other processes; whereas the order for ejectment will free the raiyat from any such expenses; and if in addition to that it be conceded as an entire satisfaction of the decree in the execution of which ejectment is made, nothing will be more welcome to the raiyat, as it will save him not only from the expenses incidental to sale, but from all liability under the decree. I submit that in this modified form the proposal should commend itself to the Council."

The Hon'ble MR. EVANS said:—"If the zamíndárs are willing to put it in this form, I should be inclined to give preference to it, provided it was coupled with the further provision giving compensation for tenants' improvements. That, however, is a matter which will require careful consideration, but it seems impossible that at this late stage of the proceedings it can be accepted. As I said before, I should have been glad to support any proposal which would have the effect of modifying the rigour of the law, because the court-fees and process-fees swallow up the value of the property in dispute. From some reliable data which I have recently received as to the summary process of distraint for irrigation-dues, I find as a positive fact that in the majority of cases where the amount of the distraint is small the costs of process far exceed the amount to be paid. I feel that it is in the power of the Executive Government very greatly to diminish the evil by lowering process-fees, and I can only hope that in the interest of the raiyat the very warm anxiety displayed by the Government will induce them, having regard to all the circumstances, to use some means of reducing the cost of process. If that is done the raiyats will have a great benefit conferred on them."

His Honour THE LIEUTENANT-GOVERNOR said:—"The inconvenience of allowing fresh amendments to be raised in the course of the discussions has been forcibly exemplified in this instance. It seems to me very unreasonable that the hon'ble member should, after having gathered the views of other hon'ble members upon a question brought forward by him, raise a new dis-

1885.] [*The Lieutenant-Governor ; The Mahárájá of Durbhunga ; Bábú P. M. Mukerji ; Mr. Reynolds.*]

cussion in an amended form in the hope of catching some votes in support of his proposal. Here we have been led into a long discussion as to the character and amount of process-fees. Instead of adhering to the amendment of which he gave notice, he raises a question on a point with regard to which the Council has received no notice. I shall certainly oppose the amendment. I think it is not convenient to review the subject in any modified form after the question has been thoroughly discussed and the proposal has been rejected."

The amendment was put and negatived.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that to section 25 the following clause be added :—

"(c) that he has not paid his rent at the appointed time."

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that to section 25 the following clause be added :—

"that he has committed persistent waste by neglecting the repair of irrigation-works or caused the deterioration of the soil."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—" I support the motion. I think a provision like this will be a necessary provision by virtue of the addition which has been made to section 23 on the motion of the hon'ble member in charge of the Bill. The Council has already decided that the raiyat should not have it in his power to deteriorate the quality of the land, and I think in all consistency we should see that some penalty should be attached to a breach of that provision. I think the form in which the amendment is put is the form which the penalty should take for a breach of the provision."

The Hon'ble MR. REYNOLDS said :—" I cannot support the amendment. It appears to me that a good deal of what the hon'ble member in charge of the Bill has said in speaking on the amendment in regard to ejection for non-payment of an arrear applies as much to this amendment. The objection is to what the hon'ble member called the moral effect on the raiyat, not a moral effect in compelling him to do his duty, but in dealing with any claim of whatever kind made against him by his landlord. I do not think it can be fairly said that, because we have inserted in section 23 the words that a raiyat must not materially impair the value of the land, it follows that we should provide the penalty of ejection as a proper penalty for a breach of duty in that respect. What the amend-

[*Mr. Reynolds ; Sir S. Bayley ; The Mahárájá of Durbhunga.*] [5TH MARCH,

ed clause proposes might be a ground for damages or for an injunction, but I cannot admit that it will be a reasonable ground for ejectment, the landlord having his remedy of not being injured as long as the rent is paid and having the right to sell in default. Then the words proposed seem to me to be dangerously wide. It is not easy to say what is persistent waste, or that a man has neglected to repair irrigation-works without some definition of his duty as to such repairs. I do not think such a suit would be likely to be successful, but there is the fact that danger would arise from the moral effect such a provision is likely to have. The same remarks apply to the words 'deterioration of the soil'. We should, I think, leave the landlord his remedy by way of a suit for damages or injunction against the cultivator, but I am strongly opposed to the principle of suing for ejectment on such grounds."

The Hon'ble SIR STEUART BAYLEY said :—"What I had to say has been anticipated by the Hon'ble Mr. Reynolds. As I said before, it has been the deliberate policy of the Government of India to restrict the grounds for ejectment. On looking at Mr. Field's digest, I see that in giving the substantive law in the text that 'the raiyat shall not, without the consent of the landlord, materially alter the condition of the land held by him, and render it unfit for agricultural or horticultural purposes' the remedy is stated to be a suit for damages or an injunction to restore the land to its original condition. He says the conditions of good agriculture are not sufficiently understood in India to raise a question of this nature. The hon'ble member will recognize Mr. Field as an authority on a point of this kind ; but, without basing my argument entirely on Mr. Field's authority, I think the importance of not permitting the threat of ejectment in every case between landlord and tenant is so great that when other remedies can be found we ought not to give such a power. I therefore think we ought not to accept this amendment."

The amendment was put and negatived.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendments that to section 25 the following clauses be added :—

"(e) that he has, without his landlord's written consent, sub-divided or sub-let his holding, or any part thereof, save as expressly authorized by this Act ;

"(f) that he has by writing, or statement reduced to writing, disclaimed the title of his landlord before any public officer or Court."

1885.]

[*Mr. Evans.*]

The Hon'ble MR. EVANS moved that for sections 28 and 29 the following be substituted :—

“No instrument, whereby an occupancy-raiyat is bound to pay for land in which he has an occupancy-right a rate of rent in excess of the rate which was payable by him in the agricultural year next preceding the execution of the instrument, shall be admissible in evidence unless it is registered.

“No occupancy-raiyat whose rent has been enhanced in respect of any land in which he has an occupancy-right shall be liable to any further enhancement for fifteen years from the year in which his rent in respect of such land was last enhanced.”

He said :—“It is with very great regret that I have to make many of the objections which I am about to make, because I recognise that a great portion of the matter I am objecting to is intended to give protection to the raiyat, and I am thoroughly desirous that the raiyat should be protected as far as it can be done by means of a workable scheme; and so far I am entirely at one with the views and objects which have moved the Government of Bengal in this matter, and have no desire to diminish in any way any protection which we can give justly and in a workable form to the raiyat. What I fear is that in the form in which the section stands it will, as a matter of fact, be unworkable in practice and will create more mischief than it will remedy. Some objections may, no doubt, be raised to the amendment which I propose, but I have no kind of partiality for the particular form of my amendment as long as the matter is substantially dealt with in some form or other. We find, as would be expected with regard to a matter of this kind, that the increase of rent paid by an occupancy-raiyat with a fixed tenure must be, from the nature of things, either by decree of Court or by agreement between the parties; because, if there is a dispute between the parties, there is no means of enhancing the rent but through the Court, and if there is no dispute the parties settle the matter between themselves, as they do in regard to all other matters in which they are able to agree. With regard to the provision which we have made in this chapter for settling disputes which arise between landlords and occupancy-raiyats as to increases of rent, where the dispute is of such a nature that they cannot settle it without going into Court, I am entirely satisfied and have no objections to make. But it must be known that it is not desirable that the parties should be forced to go into Court when it is not necessary and when the dispute can be settled less expensively out of Court. We know that in this country litigation is costly, and in many cases leads to the ruin of one or both of the parties, and more especially of persons who are ignorant. As to the restrictions on settlement by agreement, there are very serious objections that occur to me. Section 28 pre-

scribes that if enhancement by agreement is not made exactly according to the provisions of the Act, the result will be that it is void; that is to say, that the agreement, so far as the increase of rent is concerned beyond what the raiyat was paying the year before he came to an agreement, is absolutely and entirely void. The result is not that money so paid voluntarily under a void agreement is recoverable; no doubt the landlord will keep the money in his pocket, but if at any time he sues for rent at the enhanced rate which the raiyat has consented to pay, the raiyat will be able at once to say he has not to pay that amount of rent, because the increase of rent by agreement or consent is unenforceable. The contract is void. This section goes on to say that it shall be void in all cases—that is the effect of it—excepting in cases provided for in section 29. And it embodies this condition, that the agreement must be in writing and registered; that is to say, it must be a registered contract, and you cannot register a contract unless it is in writing. The next point is that the rent as it existed the year before must not be enhanced by more than two annas in the rupee or $12\frac{1}{2}$ per cent.; and thirdly, the contract must fix the rent for a term of at least 15 years. That is to say, it prescribes that every contract which enhances any man's rent, which binds him to pay a higher rent than the year before, is *ipso facto* void if it does not contain a statement that the rent is fixed for 15 years. The contract is void by the absence of that formality. The next provision is that the registration of the contract shall not be ordinary registration, but must be a registration under this section. The section provides that—

‘The registering officer shall, before registering a contract under this section, ascertain that the contract is not inconsistent with sections 96 and 178 of this Act, and that the raiyat is competent and willing to enter into it, and understands its nature.’

“Practically, as far as I understand the provision, it directs that the registration of all contracts which bind a raiyat to pay more rent than he paid the year before should be a special registration. Whether the provision that the registering officer shall ascertain all these things is directory or imperative is not very clear, but it is apparently contemplated that the registration shall be special. But later on it is provided that the Local Government may make rules for the guidance of the registering officer for making registrations under this section; so that it does seem to be some kind of special registration, and therefore documents registered under the ordinary law of registration will not be considered to be registered according to this section, and such registration will be void. The Council will see what difficulties will arise on that point when I explain what the difficulties are.

1835.]

[Mr. Evans.]

which beset it. Having explained to the Council that unless all these conditions are fulfilled a contract is void, I shall now consider what is the practical effect of them in two classes of cases. The first class of cases is that of a very large number of raiyats in this country who have no written engagements for their rent. The Council is aware that it is provided in the Permanent Settlement Regulations that the zamíndár shall give a pattá and the raiyat shall give a kabúliyat, and that engagements shall be in writing, and that the writing shall be in a certain form. The Council is also well aware that it was found absolutely impossible to bring about these results. The penalty prescribed was that the zamíndár should be non-suited if he did not produce an engagement in the prescribed form. So far as a form is prescribed, it is repealed by the Regulation of 1812, and so far as there is an authoritative order that engagements shall be in writing, it has remained a dead-letter in almost every part of the country from that day to this. In the Act of 1859 the provision is kept up that either the landlord or the raiyat may claim a written engagement, but it is optional and has very little effect; and there are still large tracts of country in which written engagements, especially amongst the poorer and smaller classes of raiyats, are not as a matter of fact in writing. The reason why this provision has had no effect is that there is a considerable mass of raiyats who have a rooted and traditional hatred of putting their names to any kind of document. Now, even if the Council is prepared to enact that every engagement for rent should be in writing, which no one has suggested, I do not see how we can possibly hope, if raiyats have this feeling, that any legislation we can make will secure engagements being in writing, and I do not see how we can secure that variations of unwritten engagements should be in writing. If an engagement is not in writing, how can any variation of it be expected to be in writing? I think we may take it as certain that people who do without written engagements will continue to do without them, and that we shall not be able by any Act to drive them to have written engagements. Then what is the position in case the Bill stands unamended? The engagement to pay a certain rent is unwritten, and the variation by which a raiyat agrees to pay a larger amount of rent will also be unwritten, and so long as there is peace between the parties the raiyat will go on paying his rent. But it may be that years after the enhancement of rent has been made the landlord or his successors will have to institute suits for arrears of rent, and then the tenants, if well advised, will plead that the enhancement was made after the passing of this Rent Act, and the enhancement is therefore void *ipso facto*, because it was not made in writing. They may say, 'It is true we have paid the enhanced rent for many years, but still the Court cannot enforce it; therefore

we demand to be put back to the position in which we were five, six or ten years before the enhancement was made.' I think every one will agree that that is not a desirable state of things; and the remedy is simple, namely, to allow things practically to remain in the position in which they are now with regard to oral engagements. At present there is no particular law on the subject, but, owing to the impossibility of proving an oral agreement to pay enhanced rent, the zamíndár has to prove that the raiyat has actually paid the enhanced rent for some years. He will not go into Court for a decree for enhanced rent on the ground of an oral agreement. But what happens is this. When a raiyat has orally agreed to pay an enhancement rent and has paid it for two or three years, the landlord, when he sues for arrears, proves that the raiyat is now paying a certain amount of rent which he had agreed to pay, and, having paid that rent for some time, it is abundantly clear that he must have agreed to pay at that rate; so the Court gives a decree. The reason why he gets a decree is that there is no law which makes oral agreements void. If you make oral agreements void the result will be that the raiyats will have the defence which I have stated. I do not think it is in accordance with the principles of equity or of natural justice to allow such a defence. The English Statutes which provide that certain engagements shall be in writing, such as the Statute of Frauds, were passed for purposes of public policy; but we find that in those Statutes exceptions are made in favour of contracts part-performed. I think it would be unreasonable to make a provision to this effect without any limitation or exception whatever, so that even 20 or 30 years after an enhancement is made and cheerfully submitted to by the raiyat, he may show that the original engagement was void, and he can then revert to the position in which he stood before that time. I take it that the principle which was found necessary in England that part-performance should be a substitute for the formalities must be recognised because of the ordinary way in which mankind transact their business, and because of the way in which certain classes of raiyats make their engagements, and that some provision ought to be made in the Bill to provide that part-performance of the contract shall be sufficient as proof of such an agreement having been made. I have not embodied that in my amendment, because I thought it better to propose an amendment in wider terms. But I wish it to be clearly understood that it is not my intention to place the raiyat in a worst position than he is in now in regard to oral agreements. I would be perfectly willing, although it is not contained in my amendment, if the Council think it necessary, in order to meet the real difficulty which I have pointed out, that they should prescribe how much part-performance of an oral agreement should be sufficient. I mean to say

1885.]

[*Mr. Evans.*]

that at any rate I would not be disposed to think that an allegation of the payment of one month's rent would be sufficient to satisfy the Court. No Court would be satisfied of the existence of such an agreement unless the raiyat had paid at the enhanced rate for one year at least. It would be a matter for the Council to consider whether the carrying out of an agreement for one or two years should be deemed sufficient instead of a written contract. If persons will go on without written contracts, you cannot force them to have written contracts; then you must provide that there must be such sufficient performance of the unwritten contract as to satisfy the Court that the arrangement has really been made and, what is more, that it has been acted upon. I have always considered that the fact of a raiyat having paid rent at an enhanced rate for one, two or three years without demur is much stronger evidence of such an agreement having been made than a registered document; because documents are often collusively given. I have had cases in which the raiyat has said that he gave a registered document because the landlord had paid him something to do so in order to injure another man, and they have sometimes actually produced witnesses to prove that they had been told that they would not have to pay increased rent under the registered contract; but when we find that a man has actually paid at the enhanced rate for two or three years, we may surely be satisfied of the reality of the transaction. We shall have an unworkable scheme if we keep the section as it is now, and I apprehend that it will have to be amended some way or other.

“Then, having told the Council of this difficulty, I come next to consider what will be the effect of this section on written engagements. First, I will observe that I do not think that we shall be able to induce the people of this country to change their common forms of patta and kabúliyat. I do not anticipate that we shall be able for many years to come to get the people to deviate in the smallest degree from their common forms. At present I seldom or never see a kabúliyat in which the raiyat has stated ‘My rent in the last year was so and so; I have now agreed to pay the further sum of so and so.’ There may be a few such agreements of that kind, but I doubt if it is ever done; the tenant will go on giving pattas and kabúliyats in the same way as before, containing no statement except that he agrees to pay a certain rate of rent for certain land. The raiyat will give a fresh kabúliyat stating the amount he has to pay under the new agreement, and stating nothing else. The first effect of such written engagements will be that they will be void unless the kabúliyat contains in itself a statement that the rent is fixed for fifteen years. Pattas and kabúliyats will not as a matter of fact contain that provision, and why should

you make it void because it does not contain that statement? I do not object to the term of fifteen years, but you have made it imperative that it should be so stated in the contract, and it will follow that when the enhanced rate is attempted to be enforced the raiyat will say that the kabúliyat which he has given is *ipso facto* void, because it does not state the term of 15 years for which the enhanced rent is not to be altered; it may state no term or it may state a shorter term. Instead of making that an imperative incident in the form of the pattá and kabúliyat, the object will be very easily attained by merely stating that the legal effect of the agreement shall be that the rent cannot be enhanced again for fifteen years.

“Then I come to a further matter, namely, registration. I feel that there is considerable force in what Mr. Hennessy and others have said that it is very hard to compel registration of contracts for such small amounts, that the registration-fees are very high and the distances at which the registration offices are situated are great. But desirous as I am to protect the raiyat, and admitting that registration does give him some protection against false documents which a gumáshta may have manufactured and to which he may have affixed each man’s mark (for in most cases the raiyats cannot write), therefore, although it is in many cases very inconvenient to cause the registration of documents of such small amounts, amounting in some instances to an enhancement of only two annas, on consideration I think it is better to modify rather than abandon this rigorous provision, and the practical working of my proposal would be this, that, although contracts may exist between the parties, no contracts at all will be produced in Court. And with regard to these small raiyats, they will be in the same position as if the engagements with them were unwritten, because, although there may be written engagements, they being unregistered will not be admissible in Court; therefore the Court will simply have to look to the prior rate of rent paid. Although we are breaking the ordinary rule that registration is not necessary in respect to small matters, it may be worth while to do so; but in going this distance I am going a very considerable way. It is because I will not consent, so far as I am concerned, in any way to participate in the formation of any scheme that will not work that I am making these observations now. I am willing that contracts, if in writing, should be registered, but if there are no registered or written engagements performance should be considered sufficient.

“I come to a further objection. I pointed out that the section appears to require special registration; that the registering officer has to make special

1885.]

[*Mr. Evans.*]

enquiries under sections 74 and 75 of the Bill as to which the Government has to prescribe certain rules; so that if the contract is not registered under this special registration it will be held that that omission renders the written instrument void. As I have said, a pattá or kabúliyat will not shew any enhancement at all. The result will be that these pattás and kabúliyats will be documents some of which will be compulsorily registered under the present Registration Act and some of them under this special registration. Every prudent man will take care, if a contract is of sufficient value to make it worth while, to register it, and if he does not do so he will have to prove part-performance. If it does not state any enhancement, he will register it in the ordinary form. Then if it does create a liability to pay a higher rent, though it be not so stated, will it be void because it is not registered in the special form? If it is not to be void, that should be specially stated in this section. Then the registering officer is directed to hold an enquiry under this section; first, whether any abwábs are included in the document. Considering that abwábs are illegal and the Courts will not enforce them, what is the use of compelling the registrar to see that the kabúliyat does not contain any provision for the payment of abwábs? If we are going to do this with regard to pattás which bind the raiyats to pay more rent, why not make the same provision with regard to every pattá? Why should we not provide that no kabúliyat shall be registered which has a provision for the payment of abwábs? The answer is that if it does contain such a provision the Courts will not enforce it. I am speaking of the difficulties which will increase the cost of registration. The registering officer has also to hold the enquiries stated in section 178. That section contains all the restrictions in contracts which we have thought it necessary to make under the Act, and again I say that whenever a contract is brought into Court and it appears to the Court that any of the provisions of the Act is contravened, or that the contract contains covenants contrary to section 178, such covenant will be declared by the Courts to be void. But we are not content that they shall be declared void by the Courts; we wish to prevent a tenant from signing anything until long enquiries have been made on difficult questions of fact as required by section 178. The registering officer will first have to ascertain the fact whether the raiyat is an occupancy-raiyat at all; then he will have to go into several other matters, one of which (sub-section (3), clause (a)) is as to whether the contract takes away the right of a raiyat to transfer or bequeath his holding in accordance with local usage; he has to enquire whether there is a local usage, and if that usage is contravened; but that is one of the matters very much in dispute in some parts of the country. Then section 178 provides that nothing

in the section shall affect the terms or conditions of a lease granted *bond fide* for the reclamation of waste land; so that if the lease appears to have anything to do with waste land he will have to satisfy himself that it is *bond fide* for waste land only, and then he will allow a relaxation of some of these conditions. I do not think that all these enquiries are necessary; they are exceedingly well meant, and I entirely sympathize with the objects of His Honour the Lieutenant-Governor, and my very deep respect for his judgment and knowledge renders it painful to me to differ from him. Still when I see these difficulties I feel I shall be neglecting my duty if I avoid pointing them out so that we may make such provision as may be necessary. Considering the great difficulties in regard to registration, you are making it more difficult and more expensive, because the registering officer may keep the parties dancing attendance upon him for weeks together because he is not satisfied as to the existence of certain local customs and other matters with regard to which he is required to satisfy himself. And then, when all these investigations are done, what is the effect? All the registering officer has done goes for nothing, because when documents which are required to be registered are taken into Court the raiyat is at liberty to prove that the document does contravene the provisions of the Act; and if he can prove that he can afford to say 'I told the registering officer a number of lies and so satisfied him, but I can prove by indisputable evidence that as a matter of fact the contract does contravene certain parts of this Act'; and the result will be that all the investigations of the registering officer will be perfectly worthless and the matter will have to be fought out in Court. I therefore think it will be better and sufficient as regards these matters to enact only that written contracts shall be registered, which is a very great protection. I do not mean to say that it is absolute protection, because nothing is an absolute protection. You have for instance cases of false personation of the raiyat, though that is rare. There are no laws under which it is not possible to commit fraud if a man is willing to go in for perjury, conspiracy, forgery and false personation. If such things are resorted to, they are occasionally successful, but what really and in all ordinary cases prevents the commission of such acts is the strong arm of the criminal law and the heavy sentence of transportation for life. I object to all these expensive extra processes of registration. If a pattá is in the ordinary form and does not disclose the fact that it enhances the rent, are we prepared to declare it to be void or not? If not, that is a fatal objection to the whole scheme of special registration.

"These are the general objections which I have to the section, and I think

1885.]

[*Mr. Evans.*]

they may all be met just as well by something else as by the amendment which I have put on the paper. My amendment is no doubt apparently defective in that it does not contain any provision with regard to part-performance, but the practical result will be much the same. If the Government of India is disposed to meet the point with regard to unwritten engagements being admitted on proof of part-performance, that would be sufficient. And with regard to written engagements, by not providing any particular form in which they must be made and making the fifteen years' term a mere statutory provision for enhancement, it will be found to work better, and it will meet my general objections to the section.

“There remain only a few remarks which I have to make upon the particular question contained in clause (a) as to the restriction upon enhancement, namely, that it shall not be more than two annas on the rupee. I have already said so much about it in the general observations I have made when the motion for the consideration of the Bill was before the Council that I do not propose to add very much to what I then said. I pointed out that there are two or three classes of cases in which it will be impossible to impose such a limit of enhancement in defiance of justice and common sense. There are certain well-known cases in which it is inexpedient at any rate that a limit should be imposed. Where the enhancement is merely on the ground of rise of prices, and where there has been an enhancement within the last 10 years, I do not believe that enhancement of more than two annas in the rupee could be got, and I think two annas may represent what is ordinarily obtained in such cases; but there is a very large class of raiyats who are allowed to sit on land on low rates in consideration of cultivating a particular kind of crop, and the landlord ought to be able to say to them ‘If I cease to make you cultivate this particular kind of crop, what would you give for the land?’ and we know that in such cases enhancements of 50 and 100 per cent. and more are common. The zamíndár, sooner than fight a large body of raiyats and incur the large expenses incidental to legal proceedings, will in many cases take one-half of what he would be entitled to if he took the raiyats into Court; and if an enhancement of 25 per cent. instead of 12½ per cent. were agreed to between the parties, what would be the necessity of compelling the landlord to sue? Under this clause the zamíndár must put them into Court. The raiyats will come in and say ‘You are our father and mother and take an enhancement of 25 per cent.’; he will say ‘I cannot do so under the law, but you may enter a consent decree for 25 per cent. with costs.’ There are large numbers of raiyats who have for some reason or other been allowed to sit at low

rates and are legally liable to an enhancement of more than 12½ per cent. besides the special classes I have mentioned, and it is unreasonable to prevent their settling with their landlord out of Court. I feel certain that it will be better to strike out the two annas limit and to leave the parties to settle among themselves. The self-interest of the raiyats might be trusted to prevent their giving any more than they think the zamíndár will get. But when the raiyat has come to the conclusion that he will lose his suit and the zamíndár will get large enhancement, is it wise to prevent him compounding the matter for a comparatively small enhancement? I know it is strongly argued that the raiyats are in need of protection, and I have said what I had to say on that subject on the last occasion. The raiyats, as we have seen, have the power to combine together and fight their landlord, and in many cases they will do so when they see a chance of success. But when they see that their neighbours have failed they will say 'The Courts are very expensive and uncertain, and we will give an agreement sooner than take the risk', and it is their interest to do so; but you say 'You shall not do this; it is better for you to go to Court'. Is the Council quite certain that it is a better judge of what is best for the raiyat—as to whether he should go into Court or not—than the raiyat himself? I think as regards that matter the raiyat is really the best judge. While I would seek to protect the raiyat in every way which is for his benefit, I would decline to put in something which, though it is intended for his protection, will work more mischief than it does good, and will not as a matter of fact prove to his advantage. If the Council will not come to the conclusion to omit the 12½ per cent. limitation upon enhancement, I certainly will ask that some provision may be made for some of those cases in which raiyats hold at specially low rates in consideration of cultivating particular crops."

The Hon'ble BĀBÚ PEĀRI MOHAN MUKERJI said that, after the eloquent speech of the learned and Hon'ble Mr. Evans in support of the motion, he had very little to say in support of it. The provision for a registration of engagement, which provided for the payment of enhanced rent would be a very great hardship upon the raiyats themselves. Their trouble and expense and the hindrance of their daily avocations would not be the least of these inconveniences. One should have supposed that in a matter like this the Council would be guided in the direction in which the present law had been found by judicial decisions to be effective. But he could challenge hon'ble members present to point to any judicial ruling saying that the absence of the provisions like those contained in sections 28 and 29 had led to hardships. On the contrary, the ruling at present supported the view which

1885.] [*Bábú P. M. Mukerji; Mr. Mandlik; Mr. Reynolds.*]

had been so eloquently maintained by the hon'ble member. He would read a decision given by Justices White and Maclean in a case in which the zamindár was allowed to give evidence of a verbal agreement to pay enhanced rent on the part of the raiyat. The following was the opinion:—

“ A verbal agreement was proved in the Lower Court to have been made between the defendant and the lady's agent, and this document was put in evidence to meet the defendant's objection about the extent of his holding and the rate of rent. The Lower Appellate Court has treated this document as a lease, or agreement for a lease, and consequently held that he was not at liberty to admit the verbal evidence which was produced in the first Court. I am unable to concur in the view taken by the Judge of the document. In my opinion it amounts to no more than an admission on the part of the defendant that the particulars set forth in the tabular statement are true, and consequently the document requires neither to be stamped nor registered.”

The Hon'ble MR. MANDLIK said that the question now brought before the Council by the Hon'ble Mr. Evans was one of two conflicting principles. If ample security was provided to the raiyats by means of registered contracts, a great deal of litigation could be avoided. While he was so far in favour of the amendment, he could not discuss the new provisions properly until they were duly brought before the Council in writing.

The Hon'ble MR. REYNOLDS said that this was one of the most difficult questions with which the Select Committee had to deal, as on the one side there was no object to be gained in driving the parties into Court, and it was very desirable that they should be left to make their own arrangements; and on the other hand there was a mass of evidence to show that if no restrictions were put upon contracts out of Court, there was hardly anything to which a raiyat could not be got to agree. A number of instances had been given in the papers before the Council from which it was clear that the raiyat could not be considered a free agent in making a contract with his landlord, and that if he signed the agreement he did not really know what he was about. For these reasons the Select Committee had decided that no enhancement out of Court should be legal unless agreed to by a registered contract, that the rent must not be enhanced so as to exceed two annas in the rupee, and that the period must be fixed at 15 years. The Hon'ble MR. EVANS considered that such a rule would lead to difficulties both with regard to raiyats who had no written engagements and to those who had such engagements: and that there were certain classes of cases in which the two annas limit would be unreasonable, especially cases in which raiyats held at low rents in consideration of their cultivating particular crops.

With regard to this point MR. REYNOLDS might refer to the report of the Behar Rent Commission. The members of that Committee were practical men, who must have been fully conscious of the objections which might be urged against their proposals: but they were unanimous in recommending that no enhancement out of Court should be allowed except under a registered contract. A similar provision existed in the present law in the North-Western Provinces. Under section 12 of Act XII of 1881, there could be no enhancement except under a registered contract, or by suit in Court, or by order of a Settlement-officer. He thought that when these facts were taken into consideration it could not fairly be said that the provision for requiring registered contracts would present insuperable practical difficulties.

Then, as to the form of the contracts, MR. REYNOLDS was not sure that he had understood the hon'ble member's objections on the subject of registration. It was not contemplated, in MR. REYNOLDS' opinion, that there should be anything which could be called special registration, or that the registering officer should be bound to make any detailed enquiries. It was only intended that the registrar should satisfy himself that the contract was in accordance with certain plain provisions of the Act, and that the raiyat understood the terms of the contract, and entered into it as a free agent. But MR. REYNOLDS would offer no objection to the striking out of sub-sections (2) and (4) of section 29 if it were thought that this would simplify the proceedings.

The hon'ble member went on to refer to the two annas limit, and he remarked that this limit would operate unfairly in certain classes of cases, and that it would be better to allow 25 per cent. out of Court than to drive the parties into Court. MR. REYNOLDS believed, on the other hand, that there was great danger in legalizing large enhancements out of Court. If the landlord wanted a greater enhancement than two annas in the rupee, he ought to be required to submit his claim to the decision of a Court. If there was a practical difficulty in any case, it would be in regard to the cultivation of particular crops, and in regard to this MR. REYNOLDS thought it would be enough to make special provision for cases of existing contracts under which raiyats might be holding at specially low rates in consideration of their cultivating a particular crop. The provision need not extend beyond existing contracts, because in future it would be in the landlord's power to let the land at the full rate, and to grant a reduction so long as the particular crop was grown.

Then, reference had been made to what were called amicable agreements,

1885.]

[*Mr. Reynolds; Mr. Amír Alí; Mr. Gibbon.*]

where no written contract existed at all; and it was proposed to recognize these as binding if they were supported by proof of part-performance. MR. REYNOLDS thought that such a provision would go far to diminish the value of the section altogether, and would allow enhancements to almost any extent out of Court. He believed that the proposals of the hon'ble member, even with the modification which he understood him to be ready to make, would have a very injurious effect on the section relating to enhancements and on the controlling power which it was intended to exercise in the matter of enhancements out of Court. If hon'ble members doubted whether the section, if passed into law in the form in which it came before the Council at present, would meet all the circumstances of the case, he would ask them to remember that it might be amended hereafter, and he urged that for the present it would be better to allow the section to stand as it was, and to maintain the principle, which had been already enforced in the North-Western Provinces, and which was recommended by the Behar Committee, that the rent of the occupancy-raiyat should not be enhanced except by a registered contract or a suit in Court. If the arguments on both sides were taken into account, he believed that there was far more danger in such an amendment as had been suggested than there was in leaving the section as it stood. He therefore hoped the amendment would not be accepted.

The Hon'ble MR. AMÍR ALÍ said that he was opposed to the amendment proposed, on the grounds which he had already pointed out in his remarks on Monday last. The two-anna limit was a necessary one. The raiyat can hardly be supposed in the majority of cases to be in a position to hold his own against the zamíndarí influence. In many places the demand for land was so great that the raiyats were anxious to agree to any terms; and whether they were able to pay the enhanced rents or not, it was enough for the zamíndars to show a high rental on the village-papers. If the two-anna limit would drive the parties into Court, then, he would contend, that the four-anna limit on enhancements in Court should be restored. As regards the objection on the ground of the difficulty of registration, that seemed to him to apply to all cases of registration. Part-payments should not be presumed to be a proof of an agreement; for that would simply leave the matter where it now was.

The Hon'ble MR. GIBBON said:—"I must say I concur in all the arguments which have been brought forward by the Hon'ble Mr. Evans in condemnation of the section as it stands in the Bill, but I go further. I disapprove altogether of the policy of restricting amicable settlement of the rents or of laying down the conditions or terms under which landlords and tenants

[*Mr. Gibbon; The Lieutenant-Governor.*] [5TH MARCH,

shall be compelled to come to an amicable settlement amongst themselves. The Hon'ble Mr. Reynolds has quoted the proceedings of the Behar Rent Commission with approval. I was a member of the Behar Commission and concurred in the findings of the commission but on a reference to the proceedings of the Committee it will be found that they never attempted to lay down the terms or conditions under which landlords should come to a settlement with their tenants. They had simply declared that the mutual arrangements to be come to between landlord and tenants should be in writing and registered, and I maintain that that is the correct solution of the question and the one which should be arrived at by this Hon'ble Council. The framers of this Bill have taken away the present procedure of issuing notices of enhancement through the Court, which is a cheap and easy process for bringing pressure to bear on the tenants to enhance their rents. It is therefore no longer necessary to place such restriction on amicable settlements as is now being provided under the Bill. The whole purport of this portion of the Bill is to force the landlords and tenants into the Court. If parties are to be forced to settle their affairs through the Courts, they should be settled free of expense. This I deem to be an impossibility. Why put parties to the expense of going to the Court when they do not wish to go there? The restrictions imposed by the Bill are useless, obstructive and unnecessary and can and will be evaded by the bad men among the landlords. Take for instance an application under section 158. If a landlord applies to have the rents, terms and conditions of a holding declared, and the tenant elects to declare that he is holding at an enhanced rent, what Court in the world would declare that his proper rent is a lower one? It can also be evaded by an amicable suit. I may be allowed to say that I equally object to the amendments of the Hon'ble Mr. Evans. The true solution of the difficulty is, as proposed by the Behar Commission, that whatever agreement is come to should be in writing and registered, be the conditions what they may."

HIS HONOUR THE LIEUTENANT-GOVERNOR said that he was bound to recognise the temperate spirit in which his hon'ble and learned friend Mr. Evans had brought forward proposals on which evidently he felt very strongly. The hon'ble member had placed before them arguments against written contracts and the registration of such contracts and the particular limitation of enhancements out of Court with all the legal force and acumen, with which, as they all knew, he was so well accustomed to plead in Courts, and HIS HONOUR did not at all undervalue the force of his logic. But HIS HONOUR could not agree in all that had fallen from the hon'ble member on these points. He understood the hon'ble member to say that it would be practically impossible to enforce

1885.]

[*The Lieutenant-Governor.*]

the limitations of enhancement out of Court to two annas in the rupee, and he apparently wished to maintain that parties should be left to make their own arrangements without any such interference on the part of the law.

That kind of argument might be reasonable enough in England, where parties to contracts in such dealings met on something like an equal footing, and might be left to look after their own interests: but he thought it was asking the Council too much to believe that parties here in India were at all in an equal position. All the facts were against that supposition. The Hon'ble Mr. Reynolds had given an accurate statement of the case, and, if there was any necessity to add evidence in support of his contention, HIS HONOUR could adduce a great deal in support of the fact that in matters of this kind the raiyat was placed every day at a great disadvantage and was justified in claiming protection from the law. From the evidence taken in the Behar Commission, it was found that the raiyat might be regarded in the position of a "minor," that is, of one who could not be left to his own intelligence to enter into a contract. If there was one principle more than another upon which the Council had been agreed from the very commencement of this legislation, it was that a proved necessity existed for imposing a limit upon the zamíndár's demand. The raiyat was not a free agent, and from documents produced in this Council last year it was shown that he was constantly compelled to sign agreements which would have been incredible if the papers themselves had not been produced. What was true of Behar in this respect was notorious from the cases which had come up from Mymensingh, the 24-Parganás, and in fact from all parts of the country. It must always be borne in mind that in the Bill as it had been drafted the limitations of enhancement out of Court in no way deprived the landlord of his right to get a higher rent if he was justly entitled to it. In enhancements by suit no limitation had been imposed; and if the zamíndár had grounds for thinking that he should get more by way of enhancement than two annas in the rupee or $12\frac{1}{2}$ per cent. upon the existing rent, let him take the case to Court, where there would be the assurance that the facts on both sides would be fully examined, and a decision passed after the sifting of all the evidence. Even the hon'ble Member (Mr. Evans) admitted that a $12\frac{1}{2}$ per cent. enhancement was a reasonable increase, and his plea was only for exceptional cases. But such hard cases might be otherwise provided for without infringing the principle, upon which section 29 was based, that where there is not the guarantee of fair dealing which the control of the judicial Court afforded some positive check must be put upon excessive enhancements out of Court.

HIS HONOUR therefore considered some such provision as this was absolutely necessary to regulate enhancements, and that it should form part of the Bill.

The Hon'ble SIR STEUART BAYLEY said :—“ It is with great regret that I have even in appearance to oppose the motion of the hon'ble gentleman opposite. In all the multitudinous points that have come before us in Committee it has been my good fortune almost invariably to find that there was a substantial agreement between us ; and even on this question I trust it will be found that our divergence is more apparent than real, or at all events that the alterations I am prepared to make will go a long way to reconcile my learned friend to these clauses. The section is, in the opinion of some, one of the most important in the Bill. This view, for the reasons given in my opening speech, I am unable to share, as I think the effect of the section must be more indirect than direct. But if not one of the most important, it is certainly one of the most debateable sections, and one about which I have had extreme difficulty in making up my own mind—a difficulty by no means lessened by the very divergent views we have heard expressed on the subject in debate.

“ To turn now to the actual objections taken by the hon'ble member. These I find to be partly to the form and partly to the substance of the section. So far as they refer to the form, I could wish that they had been brought forward at an earlier stage in order that I might have consulted with him at leisure as to the best way of meeting them. He objects to the form, if I understand rightly, because the section involves a special system of registration, and the specification of certain conditions in the deed ; and therefore a deed of enhancement which has been registered in the ordinary way, and which fails to specify these conditions, as for instance that it is to be in force for 15 years, is invalid, and it is doubtful even if rent collected under such a deed would not be an illegal exaction. Well ! on these points I am quite prepared to alter the section so as to meet his objections. The fact is that the clauses which provide for comparison and examination by the registering officer are a survival of the section of the original Bill which provided for the approval of these contracts by a Revenue-officer. It was the intention under the Bill as it now stands that they should be registered in the ordinary way by ordinary agency, but in view of the objections pointed out by my hon'ble friend to the retention of the special conditions and form of registration, I am glad to adopt the suggestion of Mr. Reynolds that the sub-sections providing for these should be abandoned.

“ Next I come to an objection which is one rather of substance than of form, though it partakes of both characters. It is directed against the provision

1885.]

[*Sir S. Bayley.*]

that all enhancements by contract must be in writing. The objection is that as a matter of fact in nine cases out of ten such contracts are not reduced to writing, still less are they registered, and if they are written they rarely refer to the old rent, but generally take the shape of a fresh pattá for a specified term of years. The hon'ble member very justly urges the impossibility of changing the immemorial custom of oral contracts by a stroke of the pen, and points out that the effect of the law will be that a raiyat having orally agreed to pay an enhanced rent, and having given practical effect to the agreement, may at any future time—ten, fifteen or twenty years hence—turn round and, by showing that the rent in 1884 was so much, effectually meet his landlord's claim for arrears, because the latter cannot produce a registered contract enhancing the rent subsequent to 1884, and the raiyat might even possibly sue him successfully for illegal exactions.

“I cannot deny the force of these objections. I had myself supposed that while this section would effectually bar a suit for enhanced rent, if not based on a registered contract, it would not have the effect of overruling the general presumption that existing rents are fair and equitable, and that the Courts in the case supposed, finding satisfactory evidence of a rent having been paid for a number of years, would presume that rent to be fair and equitable, and would not go back to enquire what the rent was in 1884; but I am informed authoritatively that Mr. Evans' construction of the Bill as it stands is correct, and that the effect would be as he supposes.

“Now the Government and the Select Committee do undoubtedly attach immense importance to getting these contracts reduced to writing and registered. I do not deny the difficulty, but I feel that if this difficulty can be overcome, not only will all rent litigation be reduced in quantity and simplified in quality to an incalculable extent, but the educational effect in enabling the raiyat to understand and maintain his rights will be enormous. For my own part I attach more weight to this educational or indirect effect of the section—a great deal—than I do to its direct effect. For these reasons I fully sympathise with the Government of Bengal in their desire to give special prominence to the principle that all contracts for enhanced rent should be in writing and registered. But in asserting this principle I do not think we should overlook the disturbing and immoral effect of allowing the raiyat to repudiate years hence the oral contract which he has accepted and carried out regularly and continuously. My hon'ble friend Mr. Reynolds has pointed out that in the North-Western Provinces a raiyat's rent can be enhanced by

agreement, only if that agreement is written and registered. This is true, but the registration in the North-Western Provinces is carried out by the establishment which is especially organised for recording and registering the rights of every raiyat in the country. The enhanced rent would in any case have to be recorded in the Government registers kept by this establishment of village accountants, and it involves but little more trouble to have the agreement itself registered by the same machinery. In Bengal we are, most unfortunately, destitute of this machinery. We have no patwáris, save in Behar, and there we have only a very demoralised kind of patwári, unchecked and unsupervised by the kánúngo who safeguards the institution in the North-Western Provinces. The conditions therefore are essentially different, and no analogy can be drawn between the facilities which exist for the registration of such contracts in the neighbouring province and the difficulties which must attend it in Bengal; nor do I think this argument justifies us in refusing to provide a remedy for the very serious objections which Mr. Evans has pointed out to the effect of the section as it stands. The remedy should, I think, be sought on the direction indicated by the hon'ble gentleman in his speech, namely, that where an oral contract has been given effect to by the continuous payment of the enhanced rent for a certain number of years, this performance should have the effect of validating the contract, and I would adopt the analogy of the rule in the case of the 'prevailing rate' and fix the term of three continuous years during which the rent has been actually paid as sufficient performance to validate the contract in the place of registration.

“Turning now to the substantive objection which the hon'ble and learned member opposite has taken to the essential point of the section, that the rent shall only be enhanced by contract to the extent of two annas in the rupee above the previous rent, I need not repeat at length what I said in my opening speech. I pointed out then that the limitation was so easily nullified by a false recital, that if the rent was once accepted by the raiyat, the limitation would be no bar to an unscrupulous landlord; and I admitted that in cases where a landlord after succeeding, in a test suit might get his raiyats generally to agree to pay the rent decreed in that suit, it would be injurious to all parties to prevent such an agreement being made and to force the landlord to bring each raiyat separately into Court to confess judgment. . But, on the other hand, you have heard what vital importance the Government of Bengal attach to the retention of this clause, especially as a safeguard in those parts of the country where the raiyat's rent is already too high and where his position is so weak that he can be induced to agree to any terms his landlord may impose on him; and

1885.]

[Sir S. Bayley; Mr. Evans.]

in the face of the urgent advocacy of the Government of Bengal I cannot recommend that this limitation should be dispensed with. There remain the special cases referred to by Mr. Evans where an unduly low rent is paid in consideration of a special crop being grown. I think it is essential to except these cases from the general rule, and I am prepared to introduce a clause to this effect. If therefore the hon'ble gentleman is willing to withdraw his amendment, I will move that section 29 of the Bill shall run as follows:—

'The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions:—

- '(a) the contract must be in writing and registered;
- '(b) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;
- '(c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract;

'Provided as follows:—

- '(i) Nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.
- '(ii) Nothing in clause (b) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.
- '(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.²²

The Hon'ble MR. EVANS said he had heard with much pleasure the views of the hon'ble member in charge of the Bill, and he thought that there was substantially very little difference of opinion between him and the hon'ble member even as to the two-anna limit, save that he utterly disapproved of it, while the hon'ble member merely entertained doubts on it. He would therefore withdraw his amendment on the terms proposed by the hon'ble member in

[*Mr. Evans; The Mahárájá of Durbhunga; Mr. Evans; [5TH MARCH, Bábú P. M. Mukerji.]*

charge of the Bill; but on the distinct understanding that he did not abandon his opposition to the limit on enhancement out of Court as useless and pernicious. He would not have withdrawn his amendment so far as it concerned this point had not the Mahárájá of Durbhunga been about to move a special amendment for striking out this clause.

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA moved that clause (a) of sub-section (1) of section 29 be omitted.

The Hon'ble MR. EVANS remarked that this was the amendment he referred to and he had said all he wished to say on the subject. He should strongly support the amendment.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said I have the honour to support the amendment moved by the Hon'ble the Máhárájá of Durbhunga. Both the Rent Commission and the Government of India took the position that Government had the right of determining the rates of rent payable by tenants to their landlords. The Rent Commission observed in paragraph 44 of their report :—

'Government never intended in 1793 to abdicate the function of determining the proportion of produce payable by the raiyat, a function cast upon them by the ancient law of the country,'

and the Government of India stated in their despatch to the Secretary of State, dated the 21st of March, 1882 :—

'In his well-known minute of the 3rd February, 1790, Lord Cornwallis observed that the right of the Government to fix at its own discretion the amount of the rents upon the lands of the zamíndárs had never been denied or disputed.'

"But Lord Cornwallis never said such a thing. The position taken by the Government of India was not only disputed, but had been conclusively disproved by the landholders. His Honour the Lieutenant-Governor apologetically quoted yesterday extracts from contemporary State literature in support of the alleged right of Government to determine rates of rent, but there was no need of any apology for his quotations. I shall presently show that contemporary State literature left no doubt whatever on the question, but before so doing I wish that it should be borne in mind that there were two parties in connexion with the proposal for a permanent settlement of the land-revenue, one for it and one against it, and that no point could be established by referring to the vacillating opinions of the parties expressed before the settlement was

1885.]

[*Bábú P. M. Mukerji.*]

made. The reference, for instance, made by His Honour to the opinions of Warren Hastings was most unfortunate. All know that his conduct towards the landholders in having deprived them of their estates and let them out in farms evoked a severe censure from the Court of Directors, that it formed one of the grounds of his impeachment before the House of Commons, and a Parliamentary Statute, 24 George III, cap. 24, was passed, among other purposes, for the object of undoing the acts of Warren Hastings in this respect, and restoring their estates to the landholders after due enquiry. A correct insight into the nature and effects of the Permanent Settlement can be got only from the Regulations themselves and from the writings of Lord Cornwallis and of Sir John Shore, who, after a most searching and careful inquiry into the rights of landholders and tenants, came to the conclusions recorded in their minutes. The settlement was not an idea suddenly conceived and forthwith put into execution. For years before it was actually made there was an elaborate enquiry into the nature of the status and rights of zamíndárs and of their raiyats, and the conclusion to which the Government came was that 'the regulation of the rents of the raiyats is properly a transaction between the zamíndár and his tenant and not of the Government'—Shore's minute dated 18th September, 1789. In another part of the same minute he said :—

'The Institutes of Akbar show that the relative proportions of the produce settled between the cultivator and the Government ; yet in Bengal I can find no instance of Government regulating these proportions.'

"The rent which the zamíndárs received from their raiyats was the parganá or established rent. It was nothing more nor less than the highest competition-rent. This is proved beyond all doubt by the minute of Lord Cornwallis, which was quoted by the Government of India in their despatch to the Secretary of State. His Lordship said :—

'Whoever cultivates the land, the zamíndár can receive no more than the established rent, which in most cases is fully equal to what the cultivators can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another would be vesting him with a power to commit a wanton act of oppression from which he could derive no benefit.'

"Again, the Preamble of Regulation II of 1793 showed that Government left 'it to the people themselves to distribute the portion payable by individuals,' and that 'Government must divest itself of the power of infringing in its executive capacity the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders.' The hon'ble mover of the Bill observed, on the occasion when the Bill was introduced, that the right

of Government to interfere in the matter of determination of the rents payable by raiyats was clearly recognised by the Marquis of Hastings, and the hon'ble member gave to the Council extracts from His Lordship's minutes in support of his view ; but, although the Marquis of Hastings was no friend of the zamíndári settlement, the opinion he formed of that settlement after he had been in the country for a number of years varied considerably from the opinion which the hon'ble member communicated to the Council. I shall read to your Lordship an extract from the writings of the Marquis of Hastings contained in Bengal Revenue Selections, Volume III, page 340.

'The whole foundation of our Bengal Revenue Code resting on the recognition of private property in the soil, and the relinquishment by Government of any right in land occupied by individuals beyond that of assessing and collecting the public revenue, it may be assumed that the *sadr málguzár*, if admitted to engage as proprietor, was intended to be vested, subject to the payment of Government revenue, with the absolute property of all land in which no other individual possessed a fixed and permanent interest, and which may have been held and managed by such *málguzár*, his representatives or assignees. Lands occupied by contract cultivators, accounting for their rents immediately to the *sadr málguzár*, were thus to be regarded as the full property of such *málguzár*, subject to the stipulations of the contract. It was also doubtless intended to recognize the full property of the *zámíndárs* in unclaimed waste lands lying within the limits of their *maháls*.'

"The question was again discussed in 1827 in connexion with Mr. Harrington's 'Bill for maintaining the rights of *khúdkhast*, *chupperbund* and other resident raiyats.' I think it necessary to read the opinion upon it by Mr. Ross, one of the Judges of the then *Sadr Court*.

'The clause, if enacted as it now stands, would probably be construed by the Courts as intending to confer an *istimrári* right upon every resident raiyat who had been allowed (although without title) to occupy the lands cultivated by him for twelve years, at a rent which had not varied during that period—a construction which could not fail to be productive of injustice to the *zámíndárs*, by encouraging their raiyats to claim rights which they had never actually possessed, and which they had never been considered to be entitled to.'

"And, as regards the rights of resident raiyats generally, Mr. Ross made the following valuable observations :—

'That all resident raiyats are entitled, according to the ancient law and custom of the country, to occupy the lands they cultivate, so long as they continue to pay certain established rates of rent, as is assumed in the preamble to the proposed regulation, is, I think, also questionable : such a right is not claimed, I believe, by mere raiyats, whether resident or non-resident, in the Upper Provinces ; and if claimed in the Lower Provinces, it could not, I apprehend, be established by a reference to either the ancient law or the ancient custom of the country.'

1885.]

[*Bábú P. M. Mukerji.*]

“The question before the Council was fully discussed, and I hope finally settled, by a Select Committee of the House of Commons in 1832. A large number of gentlemen who occupied eminent positions in the service of the Government of India or who had retired from that service, men like John Kay, Holt Mackenzie, James Mill and a host of others, were examined, the whole field of State literature was ransacked, and the conclusion to which they came was that—

‘ Unless the Government should, either by public or private purchase, acquire the zamindari tenure, it would, under the existing Regulations, be deemed a breach of faith, without the consent of the zamindárs, to interfere directly between the zamindárs and the raiyats for the purpose of fixing the amount of land-tax demandable from the latter under the settlement of 1792-93.’

“It is for Your Lordship and this Hon'ble Council to determine whether in the face of such authoritative opinions, the distinct disclaimer of the right to interfere contained in the Regulations, and of the conclusions arrived at by the paramount authority in the realm, a limitation to enhancement of rent of the nature contained in the Bill is at all warrantable.

“The question might be considered in another aspect. It appears from Sir John Shore's minute, dated the 8th of December, 1789, that the rates of rent which obtained at the time of the Permanent Settlement ranged from half to three-fifths of the value of the produce of the land. This statement is confirmed by the fifth report of the House of Commons, and I find from copies of settlement papers of 1783, obtained from the Collector's Office of the 24-Parganáas, that the rates of rent per bighá of land are variously stated at Rs. 2-10, Rs. 2-13, Rs. 2-14, Rs. 3-3, and so forth. The highest rents which obtain at present in the 24-Parganáas barely show an increase of 50 per cent. over the rents which obtained in 1783. Considering that the prices of produce have trebled and quadrupled during this interval, it is clear that the zamindárs have used with the greatest moderation their powers as to settlement of rent, and that the rates which obtain at present are far below the rates which they are entitled to get. A limitation like the one in question would therefore deprive them of their just dues, although they have hitherto exercised their powers with laudable moderation, and the tenants are very far from being rackrented, the undisputed fact being that the rates of rent vary from one-twentieth to one-third of the value of produce in these provinces.

“The injustice of the limitation is also clear from the fact that the re-settlements annually made by the Bengal Government in their khas maháls and

temporarily-settled estates show that the rates of increase are much greater than two annas in the rupee. I find that in 1883-84 the re-settlements show an increase of Rs. 24,210 over Rs. 88,799, or $4\frac{1}{2}$ annas in the rupee; in 1882-83 an increase of Rs. 31,968 over Rs. 92,021, or $5\frac{1}{2}$ annas in the rupee; in 1880-81 an increase of Rs. 1,31,805 over Rs. 2,84,682, or 7 annas in the rupee; and in 1879-80 an increase of Rs. 64,504 over Rs. 1,72,804, or 6 annas in the rupee. I do not for a moment wish this Hon'ble Council to understand that the increases shown by these re-settlements were anything but fair and equitable: I have every reason to believe, on the contrary, that the enhancements of rent were very moderate.

“ Looking at the economic aspect of the question, I wish hon'ble members will bear in mind that there is no pressure of population on land in these provinces. The total area of the different districts, including those of Orissa and excepting Nuddea, Jalpaiguri and Darjeeling, about which full information is not forthcoming, is 128,344 square miles, as shown by the returns submitted by the Board of Revenue; and I find from the Hon'ble Dr. Hunter's statistical accounts that the total cultivated area in these districts is 79,307 square miles, showing a difference of 49,037 square miles or somewhat more than one-fourth of the area of these provinces as still uncultivated. The effect of the limitation would, therefore, be to check the extension of cultivation, and lower, in an abstract sense, rents which are at present very low already. Low rents are neither good for the raiyats nor good for the country. Experience has everywhere shown that they act as a damper on the condition of the tenants and are a great drawback to their prosperity. Our own country has furnished instances of the fact. I shall read to this Hon'ble Council an extract from a paper connected with Dekkhan Raiyats' Relief Bill:—

‘ There is undeniable evidence in the report before us that the very improvements introduced under our rule, such as fixity of tenures and lowering of assessments, have been the principal causes of the great destitution which the Commissioners have found to exist.’

“ The history of the proposed limitation is also significant. The draft Bill of the Rent Commission contained no restriction whatever to freedom of contract in this respect and to enhancements out of Court. It found no place also in the Bill drafted by the Hon'ble Mr. Reynolds, the Bill which was submitted by the Bengal Government, and the Bill which was forwarded to Her Majesty's Secretary of State for his sanction. For the first time a limitation of six annas in the rupee was inserted in the Bill which was introduced in Council in March, 1883, and it was reduced to four annas in the rupee by the Select Committee last year.

1885.]

[Bábú P. M. Mukerji; Sir S. Bayley.]

An attempt was made when the question came up in its turn to reduce the limitation to two annas in the rupee, but the motion was rejected by the majority of the Select Committee, the mover finding himself in the minority of one only. At a subsequent meeting the question was all of a sudden taken up, although it was not on the notice-paper, and the limitation was fixed at two annas in the rupee.

“I shall conclude by noticing one or two observations which have fallen from hon’ble members. In expressing his intention of moving that the restriction to enhancement of rent by suit in Court should not exceed four annas in the rupee, the Hon’ble Mr. Amír Alí has virtually condemned the two-anna limit by contract as unjust and inequitable. The remark made by more than one hon’ble member to the effect that the limitation in question would not check the acts of unscrupulous zamíndárs is an additional argument why the honest should not suffer by it. His Honour the Lieutenant-Governor has observed that the case would have been different if the legislature had to deal with a class of tenants better capable of understanding their rights and entering into sentient contracts than the Bengal raiyats; but I hope after Your Lordship has gained some experience of the country, and before Your Lordship leaves our shores, you will carry with you the conviction that in intelligence and in a thorough knowledge of their civil rights and duties, not less of their social and religious duties, the raiyats of Bengal and Behar might compare favourably with their fellows in any other country.”

The Hon’ble SIR STEUART BAYLEY said that he would answer very briefly. He would have to recall the attention of the Council to the question which was now before them, and which was really remote from the learned disquisition in which the hon’ble member had just been reviewing a number of various subjects, beginning with the iniquity of Warren Hastings and ending with the religious duties of the Behar raiyats. The question before them was whether the clause limiting enhancement out of Court to two annas in the rupee should stand. In its practical aspect the question had already been debated on Mr. Evans’ motion, and he had nothing more to say on this score. The Permanent Settlement had really nothing whatever to say to it, and he thought he might say that the Council had sufficiently satisfied itself before the second reading of the Bill that the authors of the Permanent Settlement were themselves convinced of the right of the State to interfere to limit the raiyat’s rent; that in limiting that rent to the parganá rate they did so interfere; that they expressly reserved their right to interfere further if necessary, and whether they had

[*Sir S. Bayley ; Mr. Reynolds.*] [5TH MARCH, 1885.]

done so or not no settlement could possibly so bind a subsequent Government as to take away from it the inherent right to fulfil its primary duty of giving protection to the main body of its subjects. He would only further say that he must oppose the motion.

The Hon'ble MR. REYNOLDS remarked that he had no wish to detain the Council, but could only say again that the clause was one which the Government of Bengal had decided to adopt, and to which they attached great importance, and it was one of the few safeguards left in the Bill against undue enhancements. He did not think the Council should agree to strike out the clause.

The amendment being put, the Council divided :—

<i>Ayes.</i>	<i>Noes.</i>
The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Durbhunga.	The Hon'ble J. W. Quinton.
The Hon'ble G. H. P. Evans.	The Hon'ble H. St. A. Goodrich.
The Hon'ble Peári Mohan Mukerji.	The Hon'ble H. J. Reynolds.
The Hon'ble T. M. Gibbon.	The Hon'ble W. W. Hunter.
	The Hon'ble T. C. Hope.
	The Hon'ble Sir S. C. Bayley.
	The Hon'ble C. P. Ilbert.
	Lieutenant-General the Hon'ble T. F. Wilson.
	The Hon'ble J. Gibbs.
	His Excellency the Commander-in-Chief.
	His Honour the Lieutenant-Governor.

So the amendment was negatived.

The Council adjourned to Friday, the 6th March, 1885.

SIMLA ;
The 28th April, 1885.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 6th March, 1885.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble T. M. Gibbon, C.I.E.

The Hon'ble R. Miller.

The Hon'ble Amír Alí.

The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.

The Hon'ble H. J. Reynolds.

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

The Hon'ble Peári Mohan Mukerji.

The Hon'ble H. St. A. Goodrich.

The Hon'ble G. H. P. Evans.

The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Durbhunga.

The Hon'ble J. W. Quinton.

PETROLEUM BILL, 1885.

The Hon'ble MR. GIBBS moved for leave to introduce a Bill to amend the Petroleum Act, 1881. He said :—

“I must state that when the Act of 1881 was under consideration a Committee, on which were representatives of the Chamber of Commerce and the Trades Association, carefully considered the schedule which it was proposed to attach to the Act, and which had been taken from the English Act of 1871, and they reported in favour of it and Government adopted it. It must be remembered that the Act provided that petroleum must stand the test of 73° to

enable the Government to admit it into the country, and the method of testing the oil is laid down with great minuteness in the schedule. In spite, however, of all this care, shortly after the Act came into force, cargoes arrived here and in Bombay which had left America after it was known that 73° was the admission standard, which when sampled and tested on arrival flashed below the authorized standard, and in consequence came within the definition of dangerous petroleum and was refused import.

“This led to a very long correspondence between the shippers, the Governments of Bengal and India and the Secretary of State; and Mr. Redwood came out from England to test the oil on behalf of the shippers; after some months, on further testing, it gave the required results and the oil was allowed to import, but not until after the shippers had been put to very great expense. Very many and intricate experiments were carried out by Messrs. Warden and Pedler here, Dr. Lyon in Bombay, Sir F. Abel and Mr. Redwood at home, with the hopes of finding out a method which would ensure correct testing; and we have now received a new schedule prepared by Sir F. Abel, of the War Department, who is the highest authority on the point, and it is to insert this in the place of the former schedule which is one of the objects of the present Bill.

“The Government is greatly indebted to the gentlemen to whom I have just alluded for the great care and attention they have given to the subject. Dr. Lyon took privilege leave and went home, and worked with Sir F. Abel and Mr. Redwood; and the experiments carried out there, here and in Bombay have been almost beyond number. The matter was of the greatest importance, as the trade is one of great magnitude and the nature of the oil requires that only such as is ordinarily safe should be admitted into the country.

“In asking today for leave to introduce the measure I do so in order that the Bill may be before the public for sufficient time to enable the Trade to consider its provisions, especially the schedule, carefully, while there are some further details regarding which, though not of a nature to affect the commercial world, will require further consideration from Sir F. Abel and the experts; it is also advisable to have standard instruments at Calcutta, Bombay, and perhaps Rangoon, tested and approved, and registered before the Bill becomes law. Under these circumstances the measure will be introduced and allowed to lay over until the Council meets again in Calcutta next cold season.

1885.]

[Mr. Gibbs.]

“From the Statement of Objects and Reasons it will be found that the principal points for amendment are—

“(1) The alteration of the standard. ‘Dangerous petroleum’ is defined by the Act (section 3) as petroleum having its flashing point below seventy-three degrees of Fahrenheit’s thermometer. The Government of India does not see any reason for changing the standard so fixed, but in view of the possibility of variations in the application of the test, which, according to the opinions of the experts, may, even with the utmost care, cause deviations of 2° or 3° in the results, it is of opinion that the nominal legal minimum standard for non-dangerous petroleum may be slightly raised. Accordingly, section 3 of the Bill fixes the standard for dangerous petroleum at 76° instead of 73°, but to this enhanced standard a proviso is added to the effect that a consignment represented to be of one uniform quality shall not be deemed to be dangerous when on an average of tests the oil does not fall below that standard by more than 3° and no one sample has a flashing point below 70°.

“(2) The nature of the vessels to hold dangerous petroleum. Section 5 of the Act permits small quantities of dangerous petroleum to be kept in ‘glass’, among other, vessels, if each vessel does not contain more than a pint and is securely stopped. Looking to the comparatively fragile nature of glass vessels, and to the possibility of such vessels, when filled with the highly volatile liquids included under the head of ‘dangerous petroleum’, bursting, even if ‘securely stopped’, when exposed to powerful sunlight for a brief period, the prudence of including *glass* vessels among those specified in the section is, as has been pointed out to the Government of India, doubtful. Section 4 of the Bill therefore amends the section by the omission of the word ‘glass’.

“(3) The landing of petroleum at special places, and fees. The Government of India is of opinion that the restrictions at present placed on the importation of non-dangerous petroleum may be somewhat relaxed, and, instead of requiring the delivery of samples before any oil is landed, it would be sufficient to give the Local Government power to determine the places at which, and the conditions on and subject to which, petroleum may be landed and stored.

“(4) The new schedule and instruments to be verified. It is proposed to substitute a new schedule for the present one, in which a new description of the test-apparatus is inserted. It seems desirable, for the convenience of the public to provide for the deposit of a model test-apparatus, which shall be open to inspection, and after which all the instruments to be used under the Act shall

be constructed. Each apparatus when verified is to be marked with a special number, and the officer making the verification is to give a certificate in which shall be noted any corrections which must be applied to the results of the tests made with the apparatus.

“The new schedule has been prepared mainly by Sir F. Abel in conjunction with Mr. Redwood and Dr. Warden, the Professor of Chemistry in the Medical College, Calcutta, and Chemical Examiner to Government, and Dr. Lyon, the Chemical Analyser in Bombay ; and it has also been examined and considered by Professor Pedler of the Presidency College, Calcutta. It embodies very definite directions regarding the sampling and testing of petroleum, and it lays down in a most detailed manner the procedure to be adopted. It is believed that the adoption of this schedule will meet all the difficulties which have been found to occur under the present law in regard to the sampling and testing of petroleum, and that, if the procedure therein described is carefully followed, there is every reason to hope that trustworthy and generally concordant results will be obtained.”

The Motion was put and agreed to.

BENGAL TENANCY BILL.

The debate on this Bill was resumed this day.

The Hon'ble MR. AMÍR ALÍ said :—“ Whatever I had to say on the subject of fixing a gross produce limit upon enhancements of rents I have already stated in the general observations I offered the other day on the Bill, and I do not therefore propose to take up the time of the Council by referring to those points again. But in view of the opinion entertained by the majority of the hon'ble members, as far as I have been able to gather them, I think it would be useless to bring forward the next amendment which stands against my name. I therefore desire leave to withdraw it. The amendment which I intended to have moved is to insert the following words in line 4 of clause (a) of sub-section (1) of section 24 :—

‘ or so as to entitle the landlord to recover in the aggregate more than one-fifth of the average value of the gross produce of the land in staple food-crops calculated at the price at which raiyats sell at harvest-time.’ ”

Leave was granted.

1885.] [*The Mahárájá of Durbhunga; Bábú P. M. Mukerji; Sir S. Bayley; Bábú P. M. Mukerji; Mr. Quinton; Mr. Gibbon.*]

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that clause (b) of sub-section (1) of section 29 be omitted.

The Hon'ble BABÚ PEÁRI MOHAN MUKERJI said :—“ I have already submitted to the Council with reference to section 9 the arguments bearing on this question, and do not wish to address the Council on the present occasion. I need hardly say that I support the amendment.”

The Hon'ble SIR STEUART BAYLEY said :—“ The reason why we cannot accept this proposal is obvious, that it will leave the raiyat liable to annual or quarterly enhancements by suit. It could scarcely be expected that the amendment could be accepted.”

The amendment was put and negatived.

The Hon'ble BABÚ PEÁRI MOHAN MUKERJI moved that in clause (b) of sub-section (1) of section 29, for the word “ fifteen ” the word “ ten ” be substituted. He said :—“ I have already submitted to this Council the arguments in support of my proposition that an enhancement of rent should obtain currency for 10 years and not 15. The rapid strides which the country is making in material progress make it desirable that the shorter minimum period should be adopted. If there is an actual rise in prices within 10 years, there is no reason why the landlord should not get enhanced rent on account of such rise of prices, and it would be a sufficient check against any oppressive suits if the landlord is restricted from bringing a suit after the rent has been once enhanced before the expiration of 10 years from the first enhancement.”

The Hon'ble MR. QUINTON said :—“ I oppose this amendment because it applies only to enhancement by contract and not to enhancement by suit. It appears to me that whatever term is fixed in the one case ought to be fixed in the other. As many enhancements will be by suit, I think it will be hard on the raiyat to fix a less period in such cases.”

The Hon'ble MR. GIBBON said :—“ As I am of opinion that all the terms and conditions of a voluntary contract should be left to the parties concerned, and that they should not be driven to Court, I am strongly of opinion that no term should be inserted in the Bill. Being of that opinion, I would prefer that all contracts, if there is to be a limit, should be for a shorter period even than 10 years. But as no such proposition is before the Council, I shall vote for the amendment.”

[*Sir S. Bayley ; Bábú P. M. Mukerji ; Sir S. Bayley ; [6TH MARCH, The President ; Sir S. Bayley.]*]

The Hon'ble SIR STEUART BAYLEY said :—“ The question between 10 and 15 years in regard to contracts is of course a question of degree. Having once settled that the rents of enhanced contracts are to run for a fixed period, it is a question of the balance of advantage. I do hope my hon'ble friend will consent to the necessity of fixing the same term for enhancements by contracts as for enhancement by suit.”

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—“ My amendment upon section 9 was lost simply on the argument that the same rule should obtain in the case of a tenure-holder as in the case of a raiyat ; and as the Bill contains a provision to the effect that 15 years should be the minimum period in regard to the enhancement of rents of raiyats, the same period should be maintained as regards tenure-holders. Hon'ble members do not meet any of the other arguments advanced by me. With reference to the present amendment, the only argument urged by the hon'ble member in charge of the Bill is that the period must be the same as the period fixed for tenure-holders. None of the other arguments adduced by me have been met by any hon'ble member either on the present or the previous occasion. I submit this is simply arguing in a circle. Of course, the amendment rests on the vote of the Council, but I think it is a very striking fact that the previous amendment was lost because there is this provision in reference to raiyats, and this motion is objected to because there is a previous provision with reference to tenure-holders.”

The Hon'ble SIR STEUART BAYLEY asked permission to explain. He said :—“ The hon'ble member has quite misunderstood what I intended to say. I said that the section as to enhancement by contract ought to be the same as that for enhancement by suit. The real vote would then be taken on the section relating to enhancements by suit. I did not in the smallest degree intimate that the provisions of this section would depend on the provision relating to enhancements of the rents of tenure-holders.”

The amendment was put and negatived.

His Excellency THE PRESIDENT said :—“ We have now reached that stage in the Bill when it will be convenient for the hon'ble member in charge to introduce the modification we have agreed to as to the result of the discussion which took place yesterday.”

The Hon'ble SIR STEUART BAYLEY said :—“ I will now move the amendment which was agreed on the motion of the Hon'ble Mr. Evans in reference to

1885.] [Sir S. Bayley; Rao Saheb V. N. Mandlik; Mr. Reynolds.]

section 29. I accordingly move that for section 29 the following be substituted :—

‘ 29. The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions :—

- ‘ (a) the contract must be in writing and registered ;
- ‘ (b) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat ;
- ‘ (c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract ;

‘ Provided as follows :—

- ‘ (i) Nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.
- ‘ (ii) Nothing in clause (b) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled ; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.
- ‘ (iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.’ ”

The Hon’ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said :—“ I should wish, if it can be done, to consider this new section at the next meeting of the Council, or after the Council adjourns in the course of the day. I may perhaps have to propose a short amendment on one of the clauses of the proposed section.”

The consideration of the proposed new section was postponed till after the adjournment for luncheon.

The Hon’ble MR. REYNOLDS moved that in section 30, for clause (a) the following clause be substituted :—

- “ (a) that the rate of rent paid by the raiyat is substantially below the prevailing rate, that is to say, substantially below the rate generally paid for not less than three

[*Mr. Reynolds.*]

[6TH MARCH,

years by occupancy-raiyats for land of a similar description and with similar advantages in the same village, and that there is no reason for his holding at so low a rate”.

He said :—“ It is not the object of the amendment to re-open the question of the abolition of the prevailing rate as a ground of enhancement. That question has been decided by the Select Committee, who have justly remarked in their report that this is the only means by which a landlord can remedy the effects of fraud or favoritism on the part of his agent or predecessor. I submitted to the Committee an amended form of the section, which would, in my opinion, have provided a sufficient remedy, while guarding against that misuse of this ground of enhancement, of which such strong and concurrent testimony has reached us from various parts of the country. My proposal, however, was not favourably received, and I do not now desire to revive the discussion on the question of abolishing this ground of enhancement altogether. If I refer at all to the general question, it is only because I imagine that the Council will expect me to offer some explanation in reference to what fell from the Hon’ble Mr. Evans in connection with the Malinagor enhancement cases. I understood the hon’ble member to contend that the Bengal Government could not consistently advocate the abolition of this ground of enhancement while at the same time it was pressing the Courts to enhance the rents of its own tenants on this very ground. Now, I think it right to state that these cases were instituted in 1876, at a time when attention had not been called, as it has been called of late years, to this matter of the enhancement of rents. I don’t think the head of the Government can fairly be taxed with inconsistency for advocating in 1885 the repeal of a law which one of his subordinates put in force in 1876. This ground of enhancement was the law then ; it is the law now ; and while it continues to be the law the Government is as much entitled to have recourse to it as any private zamindár. Moreover, when the facts are looked at, I think this case affords a strong support to the position which the Government of Bengal has taken up regarding this question. What the Government has said is, that it is wrong in principle to enhance one raiyat’s rent on the ground, not that it is too low in itself, but that other raiyats have agreed to pay more ; that such enhancements are often productive of hardship ; that no real prevailing rate can be found ; and that, therefore, in 19 cases out of 20, landlords are tempted to fabricate a rate for the purposes of the suit. Now, here is a case in which a number of raiyats were paying not merely lower rents than their neighbours but rents altogether inadequate ; the strict application of the law would have warranted an enhancement of (in some cases) 200 per cent., but

1885.]

[Mr. Reynolds.]

just because the Government applied the law fairly, and did not attempt to manufacture a rate, the litigation has gone on for nine years, and matters are very much where they were when it began. I don't think there could be a stronger instance of the hopelessness of fairly applying this rule of enhancement. If the Government had established its claim it would have been a great hardship to the raiyats to have had their rents enhanced by so large an amount, but the Government has so far failed to make out its case because it has failed to show what the prevailing rate is. A plaintiff will almost always fail to show this unless he takes measures beforehand to establish, or, in other words, to manufacture, a rate, and accordingly that is the general means of proceeding in these cases. To use the forcible language of an acute and experienced Judge—'The prevailing rate is as a rule manufactured by the aid of raiyats bought over to submit to enhancement, and the new rate thus introduced is made to spread over the country by the agency of the Courts.' The landlord who attempts to work this ground of enhancement fairly will find himself involved in litigation as tedious and as unprofitable as these Malinagor suits have proved to the Government of Bengal.

"This, however, is somewhat foreign to the subject of my amendment, which merely aims at introducing a slight alteration in the wording of the Bill. The Select Committee have changed the language of the present law, and in some respects they have changed it very much for the better. But they have introduced a novel and most dangerous principle—the principle of ascertaining the prevailing rate by taking an average of existing rates. This, I think, is the interpretation which any Court would naturally put upon the words which direct the Court to have regard to the rates generally paid during a period of not less than three years. This is entirely opposed to the present law, as will be seen by a reference to the reported case of *Sumeera Khatoon*, I. W. R., p. 58, 31st August, 1864. In that case the Hon'ble Judges remanded the suit for a fresh trial and desired the lower Court to 'bear in mind that its adoption of the average rate from the different rates given by the several witnesses was an incorrect and unsafe mode of fixing the proper rate, and that the onus of proving what the proper rates are was on the plaintiff and not on the defendant.' If section 31 (a) of the Bill means anything, it means that the Court is to do what the High Court said was an incorrect and unsafe method to adopt.

"This doctrine of an average rate is not only illegal, but it is fraught with most mischievous consequences. I need hardly remind the Council that suits on the ground of the prevailing rate are entirely one-sided; they are always

cases of levelling up, never of levelling down. The landlord may sue to enhance on the ground that a tenant's rent is below the prevailing rate, but the tenant cannot claim a reduction on the ground that he is paying more than the prevailing rate. If the principle of an average rate is once introduced, the inevitable result must be that all rents will be levelled up to the maximum. Suppose that there are three rates, at one rupee, two rupees and three rupees per bighá. Under the present law the Court would perhaps decide that no rate was sufficiently established and general to be entitled to be called the prevailing rate. But under the wording of the Bill the Court would look at the rates generally paid; and it would almost certainly come to the conclusion that two rupees was the prevailing rate. This would be all very well if the rents of all the raiyats were thenceforth to be fixed at this rate. But the only result of the decision would be to knock out the one rupee rates. The two rupees and three rupees rates would remain. In the next suit, the Court would probably decide that the prevailing rate was two rupees eight annas, and thus each successive case would be a ground for a higher and a higher claim in the next. It may be said that, as a raiyat who has once been enhanced will be protected for fifteen years, the process will at any rate be a slow one. But this really affords no security. The landlord will institute one or two cases to get rid of the lowest rates. He cannot again enhance those particular raiyats, but he can enhance all those whom he has not sued. He will sue different raiyats in successive years, and within the statutory period of fifteen years he will be able to bring all the rents in the village up to the highest level paid by any one.

“ My amendment proposes to meet this by declaring that the Court shall look not to the rates but to the rate generally paid. This is entirely in accordance not only with the law as laid down by the High Court in the case I have already quoted but with the wording of the old Regulations. Section 6 of Regulation V of 1812 declares that ‘ patta's shall be granted, and collections made, according to the rate payable for land of a similar description in the places adjacent.’ The onus would lie on the plaintiff first to show the existence of a prevailing rate in the village, and secondly, to prove that the defendant was paying at a lower rate than this. I do not say that this would remove all the objections to the retention of this ground of enhancement in the law, but it would give the landlords all that the old law was intended to give them, and it would prevent that flagrant abuse of the law which seems likely to result from the present wording of the Bill.”

The Hon'ble MR. QUINTON said that he would reply very briefly as to the reason for the vote he was about to give. He had been from the first

1885.]

[*Mr. Quinton ; Mr. Evans.*]

opposed to the prevailing rate being a ground of enhancement, and if he thought the amendment of his hon'ble friend was merely confined to the removal of an inconvenience which would attend the working of the provisions for enhancing rent he would give him his hearty support. But the question was very fully considered by the Select Committee, and from what his hon'ble friend had said in his argument about the village rate, he (MR. QUINTON) had come to the conclusion that the amendment in its present form would almost entirely change the ground of enhancement as set forth in the Bill. He was opposed to the prevailing rate as a ground for enhancement, but he was still more opposed to putting in the Bill any provision which would in reality render it more objectionable as a ground of enhancement. On these grounds he must vote against the amendment. He would not give any reasons for his vote, because he thought it was not desirable that the speeches of hon'ble members should cover the same ground as that which had already been taken by the hon'ble member in charge of the Bill.

The Hon'ble MR. EVANS said :—“ With regard to the first point I think the hon'ble member has misunderstood the position as to the particular case I referred to and the effect of the observations I made on the last occasion. The suits brought against the raiyats in 1876 were for enhancement on all the grounds of enhancement, and they were finally thrown out in 1878 on the ground that the notices served by the Government were ambiguous and did not show properly the grounds on which enhancement was sought to be made. Then Government instituted fresh suits in 1881, I think, and what was remarkable was that the Government then abandoned the grounds of enhancement on which they had sued in the first instance, and rested their case entirely and solely on the ground of the prevailing rate ; and the observations I made were intended to show that if it had not been possible to work the prevailing rate without creating fictitious rates of rent, it was strange that the Government officers should have been of opinion that the prevailing rate should be selected as the best of all the grounds which were taken before ; and I also remarked that inasmuch as the cases were now being prosecuted in appeal by the present Government, I could not believe it was the opinion of the law officers of Government that none of these suits would succeed without the manufacture of fictitious rates. Therefore I thought that the persons who were acting on behalf of the Government in these cases must entertain a different view in regard to that matter. And with regard to these cases having been an inheritance from the former Government, that could be no defence, because the officers of Government were now contending in appeal before the High Court

that they had made out their case, and were entitled to have these heavy enhancements decreed on the sole ground of the prevailing rate. I merely explain this to show that my observations have been misunderstood. Then we come to the statement of one of the Judges, who stated that it was customary to manufacture fictitious rates. That means that some people have resorted to the practice of taking kabúliyats containing nominal rates of rent which were not intended to be enforced, and that they suborned raiyats to make documents by way of proof of a rate which was non-existent. This matter of manufacturing rates, of giving illusory evidence of this kind, was what led the Council to make it a direction that the Court should have regard to the rates paid for the last three years. As to manufacture of false evidence, there is no class of cases in India in which false evidence is not constantly manufactured. The moment any law is passed, there are many persons who at once proceed to see how evidence can be manufactured to meet the requirements of the law. If this manufacture of false evidence were a good ground for repealing this part of the present rent law, it would be an equally good reason for repealing one-half of the laws we have made. With regard to the other matter of average rates, as long as we preserve the words of the present law 'the prevailing rate,' and not the average rate, the rulings of the High Court which prohibit the striking of an average, except to a very small extent in very special cases, would equally apply to the present section as settled by the Select Committee; and that there is nothing unfair in giving a direction that the Court should look to the prevailing rates will be apparent from the case in 5 W. R., page 70, in which the Court expressly said that the Judge must look to the rates prevailing at places adjacent. I do not think we have in reality in any way changed the law or the rulings on the subject of average. Say, there are two rates, one of Rs. 5 and one of Rs. 2; merely to strike an average between the two will not be in compliance with either this Act or the old law. But I do think the class of judgments I have more than once referred to, in which the Judge says 'This man is found to be holding at Re. 1; the claim is to have his rent enhanced up to Rs. 2 on the ground of the prevailing rate, and there is a great deal of contradictory evidence as to what the prevailing rate is; I doubt the evidence which makes it out to be Rs. 2, but I find that except in isolated cases land of this description is never held under Re. 1-8; therefore, I shall be safe in finding that the 'prevailing rate' is not less than Re. 1-8',—that is the sort of way in which the Courts have frequently given judgments in regard to these matters upon discrepant evidence. And I think rightly so. Because it seems, according to Colebrook, that he, having found in 1811 that the parganá rates were in many cases undiscoverable, thought it would be wise to provide some rules with

1885.]

[*Mr. Evans.*]

regard to such cases, and the rule having been made in the Regulations of 1812, gave rise to the provisions as to 'prevailing rate' in the Act of 1859. Under the expression 'the prevailing rate for similar lands held by similar classes of raiyats in places adjacent' the Courts have been able to give a certain amount of relief; and this ground of enhancement has, I think, on the whole been found the most workable of the grounds provided in Act X of 1859.

"Then with regard to the actual amendment which has been brought forward by my hon'ble friend, I will point out that the great objection is this, that it incorporates into the definition directions which the Select Committee propose to give to the Judges. Every lawyer knows that if into a definition of the ground on which enhancement is to take place you incorporate a number of things which the Court may have regard to, you make those things so positively a part of the definition, that in an appeal on a point of law to the High Court, if the whole of the matters contained in the definition have not actually been found on evidence, the case will fall to the ground. I fear it will be exceedingly difficult for a Court to conduct an investigation in this way without an enormous amount of expense and laborious investigation, and that there will hardly be a case which will not be capable of being upset by a special appeal to the High Court. It is not because I wish to change or widen the law that I think the draft, as it has been settled by the Select Committee, should remain. I should be sorry again to do what has been inadvertently done in Act X of 1859, that is, to offer to landholders grounds of enhancement which are unworkable; and if that is done again after the strongly expressed determination of the Government and of the Select Committee to make the grounds really workable, I think we shall be incurring a very grave responsibility, and that we shall find it very difficult to justify ourselves. We have in fact cut down the area from which we are to draw the comparison; we have cut it down to the village, and complaints are heard that we have cut it down too much, because as the law stands you may enhance rent of a whole village by showing that the neighbouring zamindár has succeeded in getting his villages to pay higher rents. Adjacent land, it has been held, need not be conterminous. Although the provision as it stands in the Bill somewhat restricts the power which the zamindár at present possesses, we thought it well, on the whole, to cut it down, because it has been found that raiyats have now great difficulty in meeting suits for enhancement of rent on the ground of the prevailing rate, because the area for comparison is wide and vague, while zamindárs find it difficult to know how much proof to give as the area is undetermined. But having cut down the area of comparison to the village itself, one does not like to insert words likely to

[*Mr. Evans ; Mr. Hunter ; The Lieutenant-Governor.*] [6TH MARCH,

increase the risk of its being unworkable. And that will be the effect of the proposed amendment. I am therefore obliged to oppose it."

The Hon'ble MR. HUNTER said:—" My Lord, I should like to say a few words on this subject, as I start from an opposite point of view from that which has been taken by the hon'ble mover of the amendment. I think the prevailing rate is in itself a good ground of enhancement. It is a ground which has always existed; and it has been continuously enforced in the management of estates since we entered the country. It is a ground which has been recognised by our early Regulations; and it was formally embodied in the law of 1859. It has been frequently urged upon the Select Committee to expunge that ground or to modify it in some way, so as to render it ineffectual. The Select Committee have taken precisely the opposite course. They have endeavoured to give reality to the old law in this as in other matters, and to render the prevailing rate an effective ground of enhancement where it can be equitably urged. I believe that the amendment now brought forward would have the effect of nullifying this ground of enhancement by rendering it very difficult to enforce it in the Courts. It would lead to the very abuses and fabrication of evidence which the hon'ble member who moved the amendment has so frequently and so eloquently deplored. I therefore think that if the prevailing rate is to remain at all, the Select Committee have done wisely in giving reality to it."

His Honour THE LIEUTENANT-GOVERNOR said:—" I concur with my hon'ble friend the mover of the amendment. I think the amendment gives better security against fabrication and provides better safeguards against abuses than those which will prevail under the section as it stands. In putting forward this amendment we recognise the retention of the prevailing rate as one of the main grounds of enhancement, though I believe that whatever wording may be adopted, in the application of it you will find that it is practically unworkable, from the fact that it is totally impossible to prove in any part of the country the existence of a prevailing rate. It is defended on the ground of its antiquity; but if that is its main ground of defence, then there are a great many other things which we might have to fall back upon. One of these was that in the early days zamíndárs who did not pay the land-tax were immediately punished in person and kept in prison. The growth of information and experience has shown the way in which the prevailing rate is worked. The difficulty of establishing the existence of a prevailing rate has led to irregular and improper means to fabricate it. The resort to such measures

1885.]

[The Lieutenant-Governor.]

is demoralizing to those who use it and unjust to the unfortunate raiyats. Wherever we have had local enquiries and anything like detailed investigation, the fact has come out that there is no such thing as a prevailing rate, and that the rates of rent in every village were innumerable. This was the result of the personal enquiries held by Mr. Finucane, Mr. Tobin and Bábú Parbati Churn Rai upon this particular point in different districts; and I believe that if detailed enquiries were made elsewhere, you would find exactly the same results. I am glad to hear from my hon'ble friend Mr. Evans that he thinks the form of safeguard adopted by the Select Committee in the Bill will secure that the Courts do not take the average of numerous rates in the decision of suits under the section. It is only to make this point stand out clearer that the wording of the amendment which I would support has been suggested. The Courts have always held that the provision of the law as it stands should not be worked in the way of taking the average of many rates. The section by the amendment only gives emphatic support to this rule. With regard to the personal matter which has been brought against me with reference to the rent suits at Malinagor, I wish to say that, so far as regards the time when those suits were instituted in 1876 or 1878, the argument *ad hominem* which the hon'ble and learned member (Mr. Evans) directs against me, can have no application to me, because in those years I was employed in another and distant field of service, and had nothing to do with Bengal; but it is obvious that even if I had then been Lieutenant-Governor of these provinces, I could not possibly have interfered in the matter. The prevailing rate is a ground of enhancement in the existing law, and it was perfectly open to our Collectors and law officers to adopt it for enhancement in particular cases. But beyond that I would justify myself on the ground that a Lieutenant-Governor is not in a position to know what cases are going on in litigation between Government and others, and there may be hundreds of cases going on in different districts at the present moment in which the prevailing rate is being urged as a ground of enhancement. As my hon'ble friend, the mover of the amendment, has observed in the present state of the law, the Government has as much right as anybody else to appeal to the grounds which the law allows, though it may not be wise in doing so. It may be observed that even in the Malinagor suits it has not yet been proved that there is such a thing as a prevailing rate. The decision of the Judge was a very summary decision, and I understand that an appeal to the High Court has led to a call for the papers to ascertain whether there is such proof of a prevailing rate as to justify the finding of the District Judge. Therefore this particular case gives no support to the theory of a prevailing rate. As the principle of a prevailing rate however is to be retained in the Bill, the aim of

the amendment is by providing an additional safeguard against its wrong use to prevent the recourse to an average rate, which the law never intended."

The Hon'ble SIR STEUART BAYLEY said :—" I think I should be grateful to the Government of Bengal that they have not opposed the ground of the prevailing rate altogether; they have however discredited it, by saying that it does not exist, and that there is no justification for it. I will not follow my hon'ble friend Mr. Reynolds in the exhaustive disquisition which he has given as to the reasons there were for supposing that the prevailing rate can never be found, but I will confine myself to the particular points which are before me. But I must first say one word with regard to the decision to which the Select Committee came not to abolish the ground of the prevailing rate generally. The main reason, as I explained before, was that in one shape or another it has been allowed as a ground of enhancement since the time of the Permanent Settlement; the parganá rate of which had been transmuted into the prevailing rate, and had in that shape been in the Statute-book since 1812. In that case I may fairly say it will be hard to remove the prevailing rate altogether, even if there were no other reasons for retaining it, and those who oppose it will have to show very strong reasons for doing so. But there is really a very sufficient reason why it should be retained, namely, that there are no other means by which the zamíndár can recover a just rate of rent from those raiyats who by reason of relationship to the *amlé*, or of caste, or by bribery, have been allowed to enter and hold at very insufficient rates. My own experience as to the management of wards' estates has convinced me that where gumáshtas have not been very closely looked after, they are in the habit of letting in their relations and friends at very low rates of rent, and the zamíndár has no means of remedying the results of the fraud or friendship either of a predecessor of his own or of his predecessor's agent or gumáshta; and it was for that reason that I voted with the majority of the Select Committee for the retention of the prevailing rate. I could not accept the suggestion to which my hon'ble friend Mr. Reynolds refers as having been made by him to the Committee because it threw on the zamíndár the impossible task of proving that fraud or favoritism attended the original letting to the raiyat, and the remedy would have been quite useless.

" I now come to the alteration proposed in the amendment, which at first sight seems a very little one. At first sight it merely uses the singular where we use the plural, but it also inserts as part of the definition what the Bill as it stands puts in as a guiding direction to the Court; and that makes all the difference in the world. In the one case the Court is bound by a hard-and-fast

1885.]

[*Sir S. Bayley.*]

rule which, if the case fails to tally exactly with the definition of the prevailing rate, causes it to fall to the ground; in the other the directions are for the guidance of the Courts as to the steps they should take to ascertain the existence and reality of the ground taken for enhancement. That is my real objection to the amendment. The proposed amendment will not have the effect which anybody on first reading it will suppose it is intended to have. It is apparently intended to allow enhancement on the ground of the raiyat's rent being below what is the prevailing rate as it is now understood by the Courts. My hon'ble friend Mr. Evans has told us that the Courts are very rightly not allowed to make an average. But the amendment goes further than this. It comes to this, that if there is more than one rate, if everybody is not holding at the same rate, then the ground of a prevailing rate could in no case be at all maintained. If a zamíndár wants to enhance the rent of a raiyat who holds at Re. 1-8 per bighá, and shows that out of 24 other raiyats 14 pay at Rs. 4 and 10 at Rs. 3-8, the Court must, as I understand the amendment, reject the suit, because, as in such a case there is no one single and universally prevailing rate, no enhancement can be made. If that is the meaning of the amendment, it will not do what it purports to do; it proposes to give a ground of enhancement, and then takes it away; it is practically aimed at the abolition by a side wind of that ground of enhancement as now understood and worked by the Courts. For these reasons I prefer the section as it stands, and which, we are informed, is in accordance with the present law and the interpretation put upon it by the Courts, and we are told that, if the section remains as it is, the Courts will not work it upon the principle of an average.

“I ought also to mention to the Council that I received a paper this morning too late for circulation; it is a communication protesting against our limitation of the vicinity to ‘the village’; at present it is the rate prevailing in places adjacent, and now we have, as my hon'ble friend Mr. Evans has explained, restricted it to the word ‘village’. The paper is from Messrs. Thomson and Mylne, landholders of Shahabad, gentlemen who, as everybody who knows the facts will acknowledge, through a long career and by their excellent example as agriculturists in Behar have earned the highest possible reputation both as progressive agriculturists and also as good landlords. These gentlemen object to our restricting the right of enhancement on the ground of the prevailing rate to the village, because they say it prevents a landholder who has allowed the rate to remain low in his own village from taking advantage of the more severe and stringent action of his neighbour in the neighbouring village. The answer to that has already been given by my hon'ble friend Mr. Evans,

namely, that the point was carefully considered by the Committee. The grounds which led to the change which has been made are two—first, that a very wide interpretation was given by the Courts in recent cases to the words ‘places adjacent’, and in one case it has been interpreted to cover not the adjacent villages nor even the whole parganá, but the neighbouring parganá, which might be 30 or 40 miles off. It is perfectly clear that when you compare a raiyat’s rent with rents paid in places at some distance you do him an injustice, because as long as you confine it to his own village he can prove what the rates are. But if you go outside his own village, the raiyat is quite unable to show what the rate there really is, and is at the mercy of the evidence brought by the other side. And from that point of view—and it was to a great extent accepted by the representatives of the zamíndárs—we came to the conclusion that it is on the whole fair to restrict the comparison of rates to the particular village. I make these observations, although no one has objected to the alteration which has been made by the Committee, because it is the only opportunity which I have had to refer to the objections which have been made by my highly-respected friends Messrs. Mylne and Thompson.”

The Hon’ble MR. REYNOLDS said in reply:—“I purposely avoided referring to the general question. I did not attempt to argue in favour of the abolition of this ground of enhancement altogether. The charge brought against the amendment is that it would practically be depriving the landlord of this means of enhancement. If the general question is raised, I quite admit with the hon’ble member that this is the only means by which a landholder can remedy acts of fraud or favouritism of his agent or of his predecessor; but if that is the ground on which the hon’ble member defends his position, why does not he confine the operation of the section to cases of that kind? Then, with regard to the question as to the operation of the amendment in the case put by the hon’ble member, namely, that if one raiyat paid at Re. 1-8 per bíghá, and the rest some at Rs. 4 and some at Rs. 3-8, the section as proposed to be amended would prevent any enhancement at all, of course, a possible example can be put in reference to any proposal; but the object of the amendment is honestly to say that where there is no rate substantially established to be the prevailing rate, enhancement on the ground of the prevailing rate should not be allowed; and that I think is according to the existing law. If there is no prevailing rate a suit for enhancement on that ground ought to fail. But I would ask the hon’ble member to consider the hypothetical case I put, where 10 raiyats pay at Rs. 2, 10 at Rs. 3 and 10 at Rs. 4. I don’t think that in such a case there should be any enhancement

1885.] [*Mr. Reynolds; The Mahárájá of Durbhunga; Bábi P. M. Mukerji; Mr. Gibbon.*]

on the ground of the prevailing rate, because such a rate would not have been established. But the section as it stands would tend to the enhancement of all rents up to the maximum of Rs. 4, and that would not be in accordance with the principles of the present law."

The amendment was put and negatived.

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that for clause (b) of section 30 the following be substituted:—

"(b) that the value of the produce of the land has been increased otherwise than by the agency or at the expense of the raiyat."

The Hon'ble BĀBŪ PRĀBĪ MOHAN MUKERJĪ moved that in clause (b) of section 30, for the words "staple food-crops" the words "the crop grown on the land" be substituted. He said:—"The use of the words 'staple food-crops' would give rise to this anomaly, that when the crop grown on the land had risen in value, the landlord would get no enhancement whatever if the price of the staple crops had not risen simultaneously; while, on the other hand, when the price of the staple crops had risen, and the price of the crop grown on the land had not risen or probably had declined, the raiyat would still have to pay enhanced rent, and at the same time have to spend more money in buying his food-grain. So that the provision would operate hardly both on the landlord and the raiyat; and with a view to prevent this anomaly I move this amendment, which I think is in conformity to the law as it exists at present."

The Hon'ble MR. GIBBON said:—"I certainly think my hon'ble friend has misunderstood the provisions of this section. The use of the term 'staple food-crops' is rather as a standard of value than as a means of enhancement; it is to be used for the purposes of adjustment. I think he has failed to see that the standard will affect the reduction of rents as well as their enhancement in the future. Any crop the price of which is dependent on its export value cannot be used as a standard of adjustment. If the amendment proposed be carried, it will infuse an amount of uncertainty into our system as to become intolerable; it will become impossible to follow the fluctuations of the markets. Any commodity that is to be taken as a general standard of value for the adjustment of rents must be a commodity that is in general use among the people amongst whom it is grown; only such commodities can be regular in their prices. Staple food-crops vary little in their prices from year to year, whereas the value of indigo, tea, sugar and other crops dependent on their export value for their

[*Mr. Gibbon ; Sir S. Bayley ; Mr. Hunter.*] [6TH MARCH,

prices constantly fluctuate, and for some years past they have least a downward tendency ; the acceptance of such commodities as a standard might have the effect of reducing rents instead of enhancing them."

The Hon'ble SIR STEUART BAYLEY said:—"I explained in my opening speech what the intention of the Committee was. We took the staple food-crops as an index to prices generally. We deliberately rejected the idea of enhancing or reducing rates of rent according to the crop grown on the ground. If the hon'ble member will look at the result of the words he proposes, he will find when he comes to enhance rents he will have to ask the Court to compare the prices of crops grown today with the prices of crops grown 10 years ago. But he will first have to prove what the crop grown 10 years ago was. This he can never do. It is not the fact that the same crop is grown for 10 consecutive years. It is especially in the more highly priced crops that variations occur more frequently. But that is not my main objection. My real objection is one of principle, that the raiyat's rent ought not to be raised because he is a shrewd man and grows the crop which will pay him best ; and similarly the landlord's rent should not be diminished because the raiyat is a foolish man and grows the crop of the least value. For working purposes we assume all rents to be at a fair and equitable rate. It will require no great acumen to see that if the rates are to be altered according to the crop it will be injurious both to the landlord and to the raiyat ; and if the raiyat is to be taxed for growing more expensive and remunerative crops it will in the aggregate work more harm to the zamindár than even to the raiyat."

The amendment was put and negatived.

The Hon'ble MR. HUNTER, on behalf of the Hon'ble Mr. Amír Alí, moved that for clause (b) of section 30 the following be substituted:—

"that the net value of the produce has been increased otherwise than by the agency or at the expense of the landlord."

He said:—"My Lord, without expressing any opinion of my own on the motion, I will state briefly the reasons which have led the hon'ble member to propose this amendment. His first argument is the general one based on the poverty of the raiyats in Bengal. My hon'ble friend considers that the raiyats, especially in Behar, are so poor as to render it exceedingly inexpedient to give to the landlords the trenchant ground of enhancement embodied in this section (30). The second argument of my hon'ble friend may be briefly stated as follows. Not only does my hon'ble friend consider that the raiyats are too

1885.] [*Mr. Hunter ; Sir S. Bayley ; The Mahárájá of Durbhunga ; Bábi P. M. Mukerji.*]

poor to be subjected to so sharp a weapon of enhancement, but he also considers the advantages which the raiyats obtain from an increase in the prices are to a large extent illusory. He believes that the expense of cultivation increases *pari passu*, that very little gain really accrues to the raiyats from a rise in prices, and that what little gain does ultimately accrue to them, is needed by the raiyats to improve their position. My hon'ble friend fears that, if a rise in prices is made a ground of enhancement, not only will the cultivator obtain no advantage but he will be in a worse position than before. The effect of the amendment will be to render it more difficult for a zamíndár to obtain an enhancement on the ground of a rise in prices, I have laid before my hon'ble colleagues the arguments of my hon'ble friend, and I now leave the matter in the hands of the Council."

The Hon'ble SIR STEUART BAYLEY said:—"I must object to the amendment. The long series of litigation since 1859 has proved that it is impossible to say what the nett value of produce is, and no Court has ever been able to find out the cost of cultivation; therefore this ground of enhancement will be absolutely illusory, and the Committee accordingly rejected it."

The amendment was put and negatived.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that for clause (c) of section 30 the following be substituted:—

"that the productive powers of the land have been increased otherwise than by the agency or at the expense of the raiyat."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁBI MOHAN MUKERJI moved that for clause (c) of section 30 the following be substituted:—

"that the productive powers of the land held by the raiyat have increased otherwise than by the agency or at the expense of the raiyat."

He said:—"This is the present law on the subject. It gives the zamíndár the right to enhance rents for any increase in the productive powers of the land, however caused, unless the cause of increase is the raiyat's own expense or agency. I do not wish to press at this moment the question of the zamíndár's proprietary right in the land. But it will be found that, even if the raiyat's rent is enhanced, it leaves to the raiyat also a share of the increase which is caused not by his own agency or expense but either

[*Bábú P. M. Mukerji*; *The President*; *Bábú P. M. Mukerji*; [6TH MARCH,
The Mahárájá of Durbhunga.]

by natural or artificial causes. The Bill limits the right of enhancement simply to the ground that the increase is caused by fluvial action, but there may be several other causes with which the raiyat has nothing to do, which improve the productive powers of the land, and for which improvement the zamíndár has an equitable cause of enhancement. Suppose that a railway is constructed, or a public embankment is thrown up which prevents a part of the land from being trespassed upon by cattle or wild animals, or that such work prevents the land being inundated by the overflow of the river, and that this increases its productive powers; again, suppose it be shown that by the better provision made by the Government for the conservation of forests there is greater regularity in the rainfall, and there is therefore an improvement in the productive powers of the land; I submit that in these cases the landlord is equally entitled to a share in the profits. The zamíndár's rent cannot be increased to the full value of the profit; the raiyat will get his share in it. Supposing him even to be a co-proprietor in the land, still the zamíndár, as well as the raiyat, should get their respective shares by reason of such improvement in the productive powers of the land. Instead, therefore, of limiting the ground in the way, it is done in the Bill simply to fluvial action, the words of the present law in that respect should be retained."

His Excellency THE PRESIDENT said:—"I think I shall best consult the convenience of the Council by putting this motion to the vote. It is obvious that not only great loss of time but great inconvenience must result from the hon'ble member again moving an amendment which has already been dealt with by the Council. It is quite true there are four words in this amendment which are not to be found in the amendment which has just been negatived, but they do not virtually render the amendment of the Hon'ble Peári Mohan Mukerji in any sense different from that which was moved by the Hon'ble the Mahárájá of Durbhunga."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI by leave withdrew the amendment that in section 30, clause (d) and the *éxplanation* be omitted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that to clause (d) of section 30 the words "or other specific cause, sudden or gradual," be added.

1885.] [Mr. Reynolds; Bábú P. M. Mukerji; Sir S. Bayley; Mr. Hunter.]

The Hon'ble MR. REYNOLDS by leave withdrew the amendment that clause (a) of section 31 be omitted.

The Hon'ble BÁBÚ PEARI MOHAN MUKERJI moved that in clause (a) of section 31 the words "during a period of not less than three years" be omitted. He said:—"The use of these words will lead to this, that if the majority of the raiyats of a village have submitted to enhancement of rent on account of a rise in the value of produce, and a dozen or a score of raiyats obstinately refuse to pay enhanced rent, the landlord will have to wait for three years before he can sue these recusant raiyats for enhancement of rents. I submit that in a suit instituted under the clause in question it will be enough for the Courts to enquire whether the rents paid by them have been paid *boná fide* by the majority of the raiyats. Enquiry into payment for three consecutive years is not necessary for the decision of such a suit. *Boná fide* payment of rent for a single year is enough to enable the Court to decree a suit for enhancement on these grounds. In other words, I move that the restriction as to proof of three years' payment be removed."

The Hon'ble SIR STEUART BAYLEY said:—"I must ask the Council to reject this amendment. It was explained by my hon'ble friend Mr. Reynolds and by His Honour the Lieutenant-Governor yesterday that a prevailing rate is frequently manufactured by *bogus* kabúliyats, that is, a raiyat undertakes to pay a rate of rent which he does not in reality ever intend to pay with the object of proving a high rate in a suit brought against another raiyat. Our object is to show that the rate which ought to be proved is not a rate of this kind, but the actual existing rate, and payment for three years is considered to be good and sufficient proof to afford protection against colourable agreement."

The amendment was put and negatived.

The Hon'ble MR. HUNTER moved, on behalf of the Hon'ble Mr. Amír Alí, that in line 2 of clause (a) of section 31, for the word "rates" the word "rate" be substituted.

The amendment was put and negatived.

The Hon'ble MR. HUNTER moved, on behalf of the Hon'ble Mr. Amír Alí, that section 32 of the Bill be omitted. He said:—"My Lord, this section was so fully considered in the Select Committee, that it would not be right for me to detain the Council by offering any further remarks upon it."

[*Mr. Reynolds; Mr. Hunter; Bábu P. M. Mukerji; Mr. Reynolds; Mr. Hunter.*] [6TH MARCH,

The Hon'ble MR. REYNOLDS said :—“This matter was discussed at length by the Committee, and I do not think the decision come to should be disturbed.”

The Hon'ble MR. HUNTER said :—“My Lord, speaking for myself, I also hope the Council will not disturb the arrangement.”

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁBI MOHAN MUKERJI moved that in clause (a) of section 32, for the words “the decennial period” the words “a period of three years” be substituted. He said :—“The section requires that, for the purpose of determining what is the average price of grain for the purpose of working the rule of proportion, the Court must take the average of the immediately preceding ten years. This, I submit, will not only be a work of difficulty and add to the delay and expense of enquiry, but it will in many cases tend to reduce the amount of enhancement which the landlord will be clearly entitled to get. I think that a much shorter period, say three years, will be a reasonable period for striking an average to work the rule of proportion.”

The Hon'ble MR. REYNOLDS said :—“This question was discussed at some length in Select Committee. Originally the term of five years was inserted in the Bill, and it was urged that the period of five years was too short, and concrete examples were given in which it would work injustice, in some cases to one party and in some cases to the other. We, therefore, agreed to the decennial period, but at the same time we added clause (c) to enable the Court to take a shorter period in case it was impracticable to take the decennial period.”

The Hon'ble MR. HUNTER said :—“My Lord, I too hope that the Council will not alter the term of years fixed by the Select Committee. There are cases in which it would be almost impossible to take a period shorter than ten years. The hon'ble mover of the amendment suggests three years. I would ask him whether, during a year of famine or in the two years following, enhancement of rent should be granted against a tenant on the ground of the rise of prices? The high prices caused by famine after extend over three years. There is really no answer to this. The result of substituting three years for ten years would be that after a period of famine, and while the cultivators were reduced to the last stage of weakness and misery for want of food, a legal system of enhancement (based on the sufferings of the tenants) could be pushed on throughout the famine-stricken districts.”

1885.] [*Sir S. Bayley ; The Mahárájá of Durbhunga ; Bábú P. M. Mukerji.*]

The Hon'ble SIR STEUART BAYLEY said :—“ I quite agree with my hon'ble friend Mr. Hunter. It was on his suggestion, and after going into statistics to show how prices varied from year to year and how they were affected for some time after a bad year, that the decennial period was adopted. Nothing is more striking than the slowness with which prices fall after a calamity of that sort, notwithstanding that the harvests have been abundant in the subsequent years. We thought it best to counteract the operation of such special years by taking a large average.”

The amendment was put and negatived.

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that in lines 3 to 6 of clause (b) of section 32, the words from “ reduced by one-third,” &c., to “ purposes of comparison ” be omitted.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in lines 6 to 10 of clause (b) of section 32, the words commencing with “ provided ” be omitted. He said :—“ This proviso is based on an entire misconception of the actual state of facts. It takes for granted that in every case, whenever there is a rise in the value of produce, there is a greater proportionate rise in the cost of cultivation. In the voluminous literature on the subject there is not a single statement by any officer to the effect that the rise in the cost of cultivation is in any greater proportion than the rise in the price of produce. Unless that statement can be proved, countenance should not be given to a provision like this which takes the fact to be assumed. There are three contingencies with reference to this matter—first, the cost of cultivation may increase in the same ratio as the cost of produce, in which case the rule of proportion will work equitably without any reduction on the ground of the increased cost of cultivation, because it will leave the raiyat not only a proportionate increase of profits but also give him a proportionate increase in the cost of cultivation. If the cost of cultivation is increased in less proportion, it will give the raiyat greater profit, the landlord less. It is only in the third case, where the cost of cultivation has increased in a much greater ratio than the price of produce, that the rule of proportion will work hardly on the raiyat. Unless the Council has before it evidence to show that the cost of production had increased in any greater ratio than the price of produce, I submit it will be unfair to make a provision like this. In my dissent I explained my meaning by a hypothetical case. Suppose the price of produce of a bighá of land to be Rs. 8 and the rent Rs. 3, the cost of production Rs. 3 and the profit to the raiyat Rs. 2. Then, if the price rises to Rs. 10, by the rule of proportion the amount of the enhanced rent will be

[*Bábú P. M. Mukerji ; Mr. Reynolds ; Mr. Hunter.*] [6TH MARCH,

Rs. 3-12, the cost of produce will be Rs. 3-12 and the profit to the raiyat will be Rs. 2-8; so that every case in which there is a rise in the value of produce the rule of proportion contemplates a proportionate rise not only in the profits of the raiyat but also a proportionate rise in the costs of cultivation. It is on these grounds that the 15 Judges, in laying down the rule of proportion, distinctly said that the cost of cultivation was not to be taken into account, because it may for all practical purposes be taken for granted that there is a proportionate rise in the cost of cultivation with a rise in the value of produce."

The Hon'ble MR. REYNOLDS said:—"I think the hon'ble member asks too much when he asks the Council not to pass this clause unless it is prepared to show that the cost of production tends to increase more rapidly than the price of produce. It is because it is so difficult to prove the cost of production that all schemes for enhancement on this basis must fall through. There is reason to believe that the cost of production has a tendency to increase in a greater ratio to the rise in price; and if this is the tendency in a considerable proportion of cases we ought to give the raiyat the benefit of the doubt and make the rule general, because we have no data to show to what exact number it will or will not apply. I join issue with the hon'ble member in the hypothetical case of a tenant whose gross produce is Rs. 8, the rent Rs. 3, the cost of production Rs. 3, and his profit Rs. 2. Considering that the average size of holdings in this province is five bighás, the raiyat in that case will have an annual profit of Rs. 10 on the whole area of his holding. I put it to the Council whether a man in that position ought to be enhanced at all, and, if at all whether the enhancement should not be fenced round with modifications of this kind, so as to give the tenant a fair chance of having sufficient left to him to live upon."

The Hon'ble MR. HUNTER said:—"My Lord, I regret that my hon'ble friend has again raised this question, but I am prepared to meet his amendment with a direct statement of figures, which I hope will be convincing to this Council. The hon'ble member complains that to deduct one-third from the rise in prices, as an allowance for the increased cost of cultivation, would seriously diminish the enhancement of rent. Let me commend to my hon'ble friend's notice the following concrete case:—If a holding at an old rent of Rs. 12 yielded at old prices Rs. 30 worth of produce, and the value of produce were to increase to Rs. 60 or double, then, deducting one-third of the excess value, the proportion would be as follows. As the old value (Rs. 30) is to the new value less one-third of the increase (Rs. 50), so will be the old rent (Rs. 12) to the new rent. The new rent, therefore, would be Rs. 20, and I feel sure that my hon'ble friend would not, in his own estates, desire to raise the rent of any tenant by a higher

1885.]

[Mr. Hunter; Sir S. Bayley.]

proportion on the ground of a rise in prices. I should feel confident, my Lord, to leave the matter without further comment, if only my hon'ble friend were concerned; because I know his fairness of dealing with his tenants. But, as there are perhaps others who cannot be answered by this *argumentum ad hominem*, I wish to add one other observation. Underlying this particular question of a one-third deduction of the increase, is the general question as to the division of the unearned increment occasioned by a rise in prices. The hon'ble member's amendment would give the whole unearned increment to the landlord. The Bill divides the unearned increment between the landlord and the tenant. The exact proportion of two-thirds to the landlord and one-third to the tenant, as given by the Bill, was decided on after long and mature consideration. I think it is a fair division, and I would, therefore, oppose any attempt to now re-open the question."

The Hon'ble SIR STEUART BAYLEY said:—"My hon'ble friend Mr. Hunter has left me very little to say, for he has stated exactly the line I was prepared to take. I explained in my opening speech how the cost of cultivation tends in this country to increase in a more rapid ratio than the price of produce, and how it acts on the raiyat. Most of the labour is done here by the raiyat or his family, or, where outside labourers are employed, they are paid in grain. On the other hand, what are the other elements which enter into the cost of cultivation beyond the labour used? The principal cost is for cattle, ploughs, manure, &c. Now, while pasturage land is daily diminishing owing to the pressure of population, the cost of keeping cattle is increasing, so much so that within the last few years the raiyats are growing crops for their cattle. For the same reason manure is also becoming dearer, and this adds to the cost of cultivation. What my hon'ble friend said is very true, that the principle underlying the question is that of the unearned increment—in what proportion it should be divided. The Government of Bengal in the letter of the 15th September proposed a deduction of one-half; the Committee decided upon allowing one-third. The fact that the Courts cannot ascertain what the cost of cultivation is, and consequently what proportion of the increase of price should be deducted, is an accepted fact; therefore an arbitrary proportion must be taken, and the question is, where the line is to be drawn. The question has been carefully worked out in the report of the Rent Commission. I will read two extracts from their report. They said:—

'The price of agricultural produce has increased enormously in these Provinces during the last twenty or thirty years. This increase is due to two principal causes. In the first place, even while the relative value of the precious metals which are used for the coinage of

[*Sir S. Bayley; Bábú P. M. Mukerji; The Mahárájá of Durbhunga; Mr. Reynolds.*] [6TH MARCH,

a country remains the same, there is a constant tendency for the money-value or price of agricultural produce to rise as population increases and improvement progresses. The Province of Bengal has been rapidly progressive in every way during the last century of peace and security. Population has increased. A large and still expanding export trade has brought the demand of other countries to bear upon prices in addition to the enlarged demand of the Province itself. In the second place, the coinage consists of silver, and the relative value of silver has been gradually decreasing. The price or money-value of produce has therefore risen. We are of opinion that the landlord should have a share in the increase of price due to the above two causes.'

"Then they go on to consider how the unearned increment is to be divided. They said :—

'In the third case, which is by far the most common, the case, that is, of an increase of price brought about by neither the zamíndár nor the raiyat, but by general causes, the reasoning used above (§55) in respect of the similar case arising upon the third ground of enhancement appears to have equal application. Having given the whole subject in its diversified details what consideration we have been able, a majority of us think that the fairest general rule * * * will be to divide the increment equally between the landlord and tenant. Messrs. Mackenzie and O'Kinealy would in this case, as well as in the analogous case under the third ground of enhancement, give two-thirds of the increment to the raiyat and the remaining one-third to the landlord.'

"It will be seen that while some members of the Rent Commission thought the raiyat should have two-thirds and the zamíndár one-third of the increment, the majority came to the same conclusion as the Government of Bengal that it should be equally divided. We have after fully considering all opinions come to the conclusion that one-third should be deducted for increased cost of cultivation, and that the rent should then be increased in full proportion to the increase of prices."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI by leave withdrew the amendment that clause (c) of section 32 be omitted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that in section 33, line 4, after the word "improvement" the words "made after the commencement of this Act" be inserted. He said :—"My reason is that zamíndárs who before the passing of this Act did not think of registering improvements made by them will be unable to get any enhancement on those improvements."

The Hon'ble MR. REYNOLDS said :—"I think the hon'ble member overlooks the effect of section 80, which provides for improvements made before the passing of the Act; the present amendment is therefore not required."

1885.] [Sir S. Bayley; Mr. Gibbon; Sir S. Bayley.]

The Hon'ble SIR STEUART BAYLEY said:—"Section 80 was inserted to meet the case to which the hon'ble mover has referred. If, therefore, the words proposed are inserted in section 33, there will be no ground for inserting that section."

The amendment was then by leave withdrawn.

The Hon'ble MR. GIBBON moved that section 35 be omitted. He said:—"I will call the attention of the Council to the wording of this section. It says that—

"Notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable"

"The first portion of the section allows the Judge a discretionary power to overrule the law. Section 7 gives the Court directions as to what shall be considered fair and equitable. It allows the Court to decree enhancement when the rent paid is below the customary rates paid by other people. Sub-section (2) gives an absolute discretion to the Courts only to allow enhancement when the Court considers it fair and equitable. Section 8 goes further. It allows the Court, in cases where it considers that immediate enhancement will fall hardly on a tenure-holder, to allow the enhancement to be made gradually. Section 30 and the following sections lay down the ground upon which occupancy-holdings may be enhanced, and it lays down rules to guide the Court as to what is fair and equitable. Section 36, which we have not yet come to, allows the Court, where the immediate enforcement of a decree for enhancement in its full extent will be attended with hardship to the raiyat, to be carried out gradually. Therefore to declare that the Court shall not in any case decree an enhancement which under the circumstances it considers unfair and inequitable, is unnecessary. It allows the presiding officer, when the bias of his mind tends that way, to ignore the provisions of the Act and follow the bent of his mind; it will give him an excuse to set aside the provisions of the Act. Where it suits the bias of his mind he may, whenever he pleases, set aside the law. We are giving to all judicial officers, even the most inexperienced, a power which the most experienced may hesitate to exercise. The reason to my mind must be cogent, the necessity very great, before we allow a Judge sitting in Court to override the provisions of the law."

The Hon'ble SIR STEUART BAYLEY said:—"I am not prepared to accept the amendment. The principle that all rents decreed by the Court should be fair and equitable has no doubt been accepted by the Council, but it is not

[*Sir S. Bayley ; Mr. Hunter ; The Mahárájá of Durbhunga.*] [6TH MARCH,

the case that each ground of enhancement carries with it the limit beyond which the law would deem enhancement unfair and inequitable. In its previous stages the Bill provided a maximum, but when the maximum limit was removed, it was provided by one general clause that where the rent decreed, although coming under the rules prescribed by the law, are unfair and inequitable under the specific circumstances, it should not be decreed by the Court: the special circumstances should be taken into consideration. That is the meaning of the section. I know my hon'ble friend will not wish any Court to decree what it does not think fair and equitable. The object of the section is to enable the Court to act by its judgment in the matter. I don't think there is danger that the Courts will be misled by the discretion, because there will always be an appeal to the High Court; the High Court will soon call to order any Judge who exercises his discretion in an improper manner. It is a judicial discretion."

The amendment was put and negatived.

The Hon'ble MR. HUNTER, on behalf of the Hon'ble Mr. Amir Ali, by leave withdrew the amendment that in line 6 of section 35, after the word "inequitable" the following words be inserted:—

"or which would entitle the landlord to recover in the aggregate more than one-fifth of the average value of the gross produce of the land in staple food-crops, calculated at the price at which raiyats sell at harvest-time."

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the following amendments:—

That section 37 of the Bill be omitted.

That, in the event of his last preceding amendment not being carried, in lines 7 and 10 of sub-section (1) of section 37, for the words "fifteen years" the words "five years" be substituted.

That in lines 15 and 16 of sub-section (1) of section 37, the words "or dismissing the suit on the merits" be omitted.

That in section 38, clause (b), line 3, for the words "average local prices of staple food-crops" the words "in the value of the produce of the land" be substituted.

That in section 39, sub-section (3), line 6, for the words "one month" the words "two months" be substituted.

1885.]

[*The Mahárájá of Durbhunga ; Mr. Hunter.*]

That in line 2 of sub-section (4) of section 39, after the words "Board of Revenue" the words "after hearing any of the interested parties who might have duly entered appearance" be added.

The Hon'ble MR. HUNTER moved that in sub-section (6) of section 39, for the words "shown thereby" the words "shewn in the lists prepared for any year subsequent to the passing of this Act" be substituted. He said:—"My Lord, this Bill will substitute a new and sharp procedure for the enhancement and reduction of rents in place of an old and a complicated one. Under the existing law, such enhancements and reductions of rent are granted on the ground, among others, of increase or decrease in the value of the produce. In order to obtain an enhancement on this ground, the landlord had first to prove an increase in the selling prices of the actual crops taken off the land; second, to show the quantity and quality of those crops; third, to establish the arithmetical relation of the increased prices to the actual produce, after making allowances for many incidental considerations and drawbacks. Finally, he had to work out a proportion statement between these complex factors at present and in time past. The present Bill substitutes for this difficult and complicated process the simple question of a rise or fall in the prices of staple food-crops. That is to say, the single fact of a rise or fall in prices, which was merely the initial fact to be ascertained under the old law, now becomes the only fact to be established. The result is that enhancements which were not practicable on this ground will now become practicable. But the Bill further simplifies the burden of proof. In the first place, it confines the question to the prices, not of the actual produce of the land, but of certain staple food-crops; in the second place, it provides for the publication of price-lists in the official Gazette, which lists are to be accepted by the Courts as presumptive evidence. In this way the Bill narrows the evidence to a single point, and it then provides that Government shall supply evidence on that point.

"The Bill originally proposed that these lists should be taken as conclusive evidence. It appeared to the Select Committee, however, that it would be unsafe to assign so high a value to these lists, and the Bill as now revised accords only the value of presumptive evidence to these lists. In doing so, however, I would again urge on my colleagues that we have given the same legal value to two classes of evidence, of which the real value is essentially different. For the lists to be published in the official Gazette are of two distinct classes—old lists of prices collected under no adequate safeguards for their accuracy, and new lists of prices to be collected under the very efficient safeguards provided by this Bill. I believe that the future lists to be compiled

under those safeguards will be worthy of acceptance as presumptive evidence. But my enquiries show that the old lists, collected without any of those safeguards, cannot safely be accepted as presumptive evidence. At a late stage in the deliberations of the Select Committee, a decennial period was substituted in place of a quinquennial period; so that the figures submitted to the Committee only enable me to show what would be the results of accepting the price lists for the quinquennial periods originally contemplated. If, then, we take the price-lists submitted to the Committee for quinquennial periods, they curiously conflicting different results in adjoining districts—districts in which such differences are not justified by the actual facts. We must remember that these lists are intended only to show the rise or fall in the purchasing value of silver, and we know that the rise or fall in that value has not differed very greatly in adjoining districts. But the lists on one side of the Húgli river would give an enhancement of 12 per cent. in the Bardwán district; and an enhancement of 28 per cent. in the Nadiyá district on the other side. Further up the Ganges the enhancement would be 10 per cent. in the Patna district on the southern bank, and close on 20 per cent. in the Muzaffarpur district on the northern bank. Proceeding eastwards the variations would be from 6 per cent. to 25 per cent. in districts within a given radius of Calcutta. These widely dissimilar results are arrived at by calculating from the price-lists of rice alone. If we endeavour to correct their discrepancies by adding a second crop to the calculation, say maize, as the Local Government will do under the provisions of this Bill, we get still more astonishing results. In the Bhagalpur district, rents would be enhanced 25 per cent. if calculated on the average prices of rice submitted to the Committee; but they would be reduced 46 per cent. if calculated on the price-lists of maize. In the next district but one to the west, Muzaffarpur, rents would, on the same basis of calculation, be enhanced 20 per cent. if estimated in rice rates; but they would be reduced about 22 per cent. if estimated in maize rates. In the Patna district, which is at places conterminous with these two districts, the reduction of rents, if estimated in maize, would not be 46 per cent. as in Bhagalpur, nor 22 per cent. as in Muzaffarpur, but only 2 per cent. These results are worked out from the figures submitted on behalf of the Bengal Government to the Select Committee. I am aware that they are incomplete, and that they would be revised before they were published in the Gazette. But, after careful enquiry, I do not find that data now exist for correcting those old lists with a degree of certainty which ought to give to them the value of presumptive evidence. I would ask the Council, therefore, while allowing the value of presumptive evidence to the new lists, to give the old lists neither more nor less value than they had

1885.] [*Mr. Hunter; Sir S. Bayley; The Mahárájá of Durbhunga.*]

under the Evidence Act at the time when they were collected: that is to say, they shall be held by the Courts to be relevant evidence, but not presumptive. I submit this amendment not as an amendment on behalf of the zamíndárs, nor on behalf of the raiyats, but on the ground that it is just and fair to both. We are putting a sharp weapon in the hands of both landlords and tenants—a double-edged weapon—which may produce startling results both in the enhancement and in the reduction of rents.”

The Hon'ble SIR STEUART BAYLEY said:—“We are prepared to accept this amendment in substance subject to re-consideration as to the wording of it.”

The amendment was put and agreed to.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that in sub-section (7) of section 39, line 1, for the words “Local Government” the words “High Court” be substituted.

The consideration of the following amendments was temporarily postponed:—

(1) The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA to move that section 40 be omitted.

(2) The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI to move that section 40 be omitted.

(3) The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA to move that, if his last preceding amendment be not carried, in sub section (1) of section 40, lines 2 to 6, the words from “or on the estimated value,” &c., to “partly in another” be omitted.

Also to move that in sub-section (1) of section 40, lines 6 and 7, for the words “either the raiyat or his landlord” the words “the raiyat and his landlord” be substituted.

Also to move that for sub-section (2) of section 40 the following be substituted, namely:—

“The application may be made to the Civil Court.”

Also to move that for section 40, sub-section (3), and sub-section (4); clauses (a) and (b), the following be substituted, namely:—

“On receipt of the application the Court shall ascertain the description and quantity of

[*The Mahárájá of Durbhunga ; Bábú P. M. Mukerji ; Rao Saheb V. N. Mandlik ; Mr. Reynolds.*] [6TH MARCH,

the rent in kind paid or payable for the last preceding ten years, and the tenants shall pay in future each year the amount in money which would purchase the same description and quantity of produce at the average prices prevailing for the same in the locality for the five years immediately preceding that for which payment is made."

Also to move that in sub-section (5) of section 40, in line 5, for the words "revenue proceeding" the words "civil suit" be substituted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that section 43 be omitted.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"I support the motion. The new rights which the Bill contemplates giving to non-occupancy-raiyats have necessitated the introduction of a number of new sections simply to give them protection in certain exceptional cases where the zamíndárs have not protected themselves by agreements. It is these cases only that the provisions of the Bill, commencing with section 43 and ending with clause (10) of section 46, deal with. It introduces a system which is entirely unknown to this country, and the entire procedure is both cumbersome and expensive as well to landlords and raiyats. I submit that for the purpose of a few exceptional cases such a cumbrous and expensive procedure, and one altogether unknown to the country, may well be dispensed with."

The Hon'ble RAO SAHEB VISHNANATH NARAYAN MANDLIK said:—"This is a very novel provision. Mr. Field said:—

'I am unable to see the justice of the restrictions proposed to be placed on the enhancement of rent of non-occupancy-raiyats.'

"This new legislative creation is a tenant-at-will, and it strikes me that the direct result of these provisions will be to increase the number of day-labourers and to decrease the number of these new creations. I say new creations advisedly, because the High Court has ruled in the case of occupancy-raiyats what their privileges are, and according to what Mr. Field says, both in the work on which the Rent Commission proceeded and in his work on land-laws generally, it seems the legislature so late as 1859 and 1869 have left this new question untouched. I cannot understand what equitable rights a man can have who takes land on certain definite terms. I therefore support the amendment."

The Hon'ble MR. REYNOLDS said:—"We are hardly in a position to discuss this amendment until the amendment of section 29 has been settled. It is

1885.] [*Mr. Reynolds ; Mr. Gibbon ; The Lieutenant-Governor.*]

not definitely stated that the provisions of section 29 are to extend to this chapter. I contend that these provisions are right and proper. The assertion that a non-occupancy-raiyat is a mere tenant-at-will raises a very large question. If we admit the general principle, which, I think, we should, that it is desirable to regulate enhancements, I am aware of no reason why it should not be extended to non-occupancy as well as occupancy-raiyats. With regard to section 46, we leave enhancements out of Court entirely to arrangement; the only protection we give to the non-occupancy-raiyat is that, if he refuses to agree to the enhancement proposed, we give him the liberty to claim a five years' judicial lease. I think it very reasonable that he should have that consideration granted to him. It has been all along put forward as an object of our legislation to extend the occupancy-right as far as possible, and this section and section 46 do not go unreasonably far. I should be sorry to see any alteration made in section 43."

The Hon'ble MR. GIBBON said :—" I may say briefly that I do not approve of the motion. I approve of the section as it stands. The occupancy-raiyat is in a different position to the non-occupancy-raiyat. The occupancy-raiyat is not compelled under any portion of the Bill to enter into any written engagement with the landlord. If his position is disputed by the landlord, he can appeal to the provisions of the Bill to have the terms and conditions of his holding determined. When a non-occupancy-raiyat is let into possession of land, he may be let in under a written agreement; at the end of that agreement he may have his rent enhanced or adjudicated; and if it is to be adjudicated the procedure for such adjudication is laid down. If the landlord and the non-occupancy-raiyat come to terms amongst themselves, it is very necessary that the landlord should at once put into writing the terms on which the tenant holds the land. It is not necessary that it should be alleged that he held for three years without written agreement, in order that his holding should be binding. If his holding is by verbal arrangement, he can reject any claim for enhancement and claim an adjudication of rent for five years. I cannot see what effect the provisions of section 29 will have on this section. I maintain that the section is right in principle and will be equitable in practice and should be retained."

His Honour THE LIEUTENANT-GOVERNOR said :—" I also oppose the motion. The non-occupancy-raiyat has not a satisfactory position. He enters on land on such terms as he can settle with the landlord, and it is quite in the power of the landlord when the term of his engagement expires to evict him under section 44, clause (c). But if the landlord demands enhanced rent, section 43 comes

[*The Lieutenant-Governor; Sir S. Bayley; Bábú P. M. Mukerji.*] [6TH MARCH,

into operation, and the raiyat is obliged either to agree to the terms proposed or to the rent determined by the Court, for which section 46 provides. Considering that the object which the majority of the Select Committee have always had in view, of affording some measure of protection to the non-occupancy-raiyat, I think it is necessary for the future relations of landlord and tenant that this section should be allowed to stand."

The Hon'ble SIR STEUART BAYLEY said :—" I agree with His Honour the Lieutenant-Governor as to the necessity of supporting the rights of non-occupancy-raiyats. It has all along been one of the objects of the Government of India in introducing this Bill to provide a certain amount of modified security in the position of non-occupancy-raiyats. As I said on a previous occasion, the strength and security which our Bill gives to non-occupancy-raiyats is very far short of that given to occupancy-raiyats, but is in advance of the present law, and has been deliberately made. The particular section which we are asked to remove is one which provides that the rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement under section 46. I cannot accept this amendment as it stands. It is rather premature to discuss the bearings of the clause which I propose to insert in section 29, but I cannot avoid following the hon'ble mover of the amendment by saying a few words. If we accept the principle of part-performance for one class of raiyats, the same considerations point to its being accepted for the other class. The effect of this is worth considering. It means that after the initial lease of the non-occupancy-raiyat expires, if his rent is enhanced verbally, the landlord would not sue for the enhanced rent except on proof that the raiyat had paid for three years. The result would be to facilitate the growth of occupancy-rights, for first comes the period of the initial lease, then the admission of three years' subsequent occupation, and then, if the enhancement is contested, will come in the provisions of a judicial lease for five years. I propose therefore that, when the discussion comes on on the amended section 29, the hon'ble member should say whether he desires to introduce a similar clause in this chapter. If he does, I shall of course be prepared to accept it. In the meantime I must protest against the acceptance of the amendment before the Council."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRÍ MOHÁN MUKERJI moved that in section 43 the words and figures "or by agreement under section 46" be omitted. He said :—" I have already submitted the arguments in connection with this amendment in my speech on the preceding amendment."

The amendment was put and negatived.

1885.] [*The Mahārājā of Durbhunga; Mr. Reynolds; Mr. Quinton.*]

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that in clause (b) of section 44, line 4, the words "consistent with this Act, and" be omitted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that in clause (c) of section 44, line 2, the word "registered" be omitted. He said:—"The reason is that there is no registered lease."

The amendment was put and negatived.

The Hon'ble MR. REYNOLDS moved that in clause (c) of section 44, after the words "registered lease" the words "for a term of not less than five years" be inserted. He said:—"I need not detain the Council with any detailed or elaborate argument in support of this amendment. The position of the non-occupancy-raiyat is this, that he has to pay the rent agreed upon, and if admitted to occupation on a registered contract he may be ejected on the ground that the term has expired. There is no stipulation or arrangement in the wording of the Bill as to the term for which the initial lease ought to be granted, but I believe it will be generally considered that the grant of a lease for a reasonable term of years ought to be encouraged, and my position is strengthened by one of the dissents, in which it is remarked that the effect of the operation of some of the provisions of this chapter will be to place the non-occupancy-raiyat in a worse position than at present; the landlord, having an absolute right to eject him, will in every case grant a lease for a short period and reduce the non-occupancy-raiyat to a mere tenant-at-will. That will be guarded against to a certain extent by this amendment that the initial lease shall be in every case for a period of not less than five years. If the landlord desires to take advantage of the clause which permits him to eject the raiyat at the expiration of the lease, the lease originally given should not be for less than five years."

The Hon'ble MR. QUINTON said:—"I think this proposal is worthy of support. The hon'ble member in charge of the Bill has said that one of the objects of the Bill is to give a greater degree of protection to the non-occupancy-raiyat than what he enjoys under the existing law, and there have been, since this legislation commenced, various schemes proposed to give effect to it. The main protection proposed to be given is that where the landlord wishes to enhance the rent he must give notice, and if the tenant refuses to pay the enhanced rent the landlord can demand such rent as the Court thinks fit for five years. This is undoubtedly a great protection beyond what he enjoys under the existing law. But it appears to me that if the power of ejectment stands as it is now, that the landlord may turn him out on the expiration of the lease by

[*Mr. Quinton; Bábú P. M. Mukerji; Rao Sahab V. N. Mandlik; Mr. Hunter; Mr. Gibbon.*] [6TH MARCH,

a mere notice to quit, the landlord can nullify all the clauses of this chapter by giving the necessary notice. I think therefore that the chapter as it stands is open to the objection that the protection it holds out can be defeated by such means."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—" I think this amendment will give non-occupancy-raiyats what they not only never possessed but will convert them into something like occupancy-raiyats, giving them a right to hold for at least five years, although the zamíndár may wish to let in a raiyat for only a year or two for a mere temporary purpose. If the raiyat does not agree to such short term, the lessee will have the option to reject the engagement and to apply to some other landlord, or to come to some other arrangement with his landlord. But there is no reason why to a raiyat who has admittedly no rights whatever the landholder should be forced to give a lease extending for at least five years, and if he does not do so he will have no right to eject the tenant. Nothing that has been placed before the Council justifies or warrants a provision of this kind."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said :—" Provisions like this will defeat the very object for which they are enacted, and I trust the amendment now proposed will not be accepted by the Council."

The Hon'ble MR. HUNTER said :—" My Lord, I oppose this amendment. I believe that it strikes at one of the fundamental principles of the Bill, namely, the distinction between the occupancy and non-occupancy raiyat. The Bill makes provision for the very effective protection of the occupancy-raiyat; it also provides for the development of the non-occupancy-tenant into an occupancy-raiyat. But one of the principles which I personally laid stress on from the commencement, was the recognition of the initial freedom of contract between a landlord and a new tenant. After much discussion this principle was accepted by the Select Committee, and the initial freedom of contract between a landlord and a new tenant was formally affirmed by that body. I regard this amendment as an attempt to indirectly weaken the effect of the decision thus arrived at. I do not think that the amendment is justified either by the position of the non-occupancy-tenant in the past, nor by the status which he actually possesses at present. Further, I think that it would be at once impolitic and unjust, at the present late stage of the measure, to introduce a provision which would seriously curtail the acknowledged rights of the zamíndárs in regard to a large class of tenants."

The Hon'ble MR. GIBBON said :—" I also oppose the amendment."

1885.]

[*The Lieutenant-Governor.*]

His Honour THE LIEUTENANT-GOVERNOR said:—"I support this amendment because it gives to the non-occupancy-raiyat a securer position than the Bill as it stands will give him. I may be allowed to allude here to a part of the opening speech of my hon'ble friend Sir Steuart Bayley that my words and action in a previous debate on this measure are inconsistent with the position I now assume. I stated, if I remember rightly, in the discussion of the Bill last year that there was a wide distinction between the position of the occupancy and that of the non-occupancy raiyat, and I am prepared to stand by that doctrine. Now when I made that statement I was arguing against the proposal of the Government of India in its recommendation to the Secretary of State, that the whole distinction between rights of occupancy and non-occupancy should be abolished; that legislation should proceed on the basis of not recognizing any distinction between the two classes; that we should begin from the recognition of all raiyats being in the same position. My contention was that any legislation based upon such a theory was wrong as being contrary to the practice recognised since the Permanent Settlement. I urged that every Collector in the country would tell you that non-occupancy-raiyats do not stand in the same privileged status and position as the raiyat who has occupancy-rights, and I felt sure that, if legislation on the wide basis proposed by the Government of India was attempted the difficulties connected with legislation on the subject would be very greatly enhanced. I would appeal to hon'ble members whether, in dealing with a Bill which ignored any distinction between the two classes, the difficulties would not be very much more serious than now when we recognise such difference; and I may claim the support of those hon'ble members against whose interests I am supposed to have acted whether I have not, in this matter at any rate, represented the principle which they accept. The words in which I entered my respectful protest against the recommendations of the Government of India can be quoted, and, to say the truth, I am rather proud of the fact that the decision of the Secretary of State was in accordance with the views which I held. But it is quite a different thing that, while you recognise a distinction between the two classes of raiyats, you still can recognise the necessity that the non-occupancy-raiyat should have facilities placed in his way which will enable him to grow into an occupancy-raiyat; and in dealing with the subject I have never varied from the expression of the hope that this legislation would put such facilities in the way of the non-occupancy-raiyat not only in his own interests but in the interests of the zamíndár. All the provisions which have ever been contemplated to secure his status by means of compensation for disturbance, judicial leases or otherwise came not from me nor, as far I am aware, from any parti-

[*The Lieutenant-Governor*; [*Sir S. Bayley*. [6TH MARCH,

cular member of this legislature, but originally from the report of the Famine Commission. As the Bill has come out of the hands of the Select Committee, I do not think the non-occupancy-raiyat has been secured in the position which I would desire him to have; and anything therefore which has a tendency to improve his position, to enable him to reap the fruits of his industry and to secure with the acquiescence of the zamíndár his growth into the position of an occupancy-raiyat deserves the favourable consideration of the Council. If therefore the Council see their way to accept the proposal that the initial lease should be for a term of not less than five years I shall be glad; because while the zamíndár will still have the right of eviction, he will gain thereby an opportunity of seeing whether he has got a good tenant or a bad one.

The Hon'ble SIR STEUART BAYLEY said:—"I have rarely had more difficulty in making up my mind on any point than on that now before the Council. But before I deal directly with the question you are asked to vote upon, I wish to offer a few remarks with reference to what has just fallen from His Honour the Lieutenant-Governor. I must venture respectfully to correct a misapprehension into which His Honour has fallen. In my opening speech I was quoting from what the Lieutenant-Governor said in the debate in this Council two years ago after the Bill drawn in accordance with the Secretary of State's views had been introduced. I was certainly not guilty of quoting from any paper which His Honour may have written protesting against the letter of the Government of India of March, 1881. No such paper has been published, and if it exists I could not with propriety have referred to it. The particular expressions which I used were out of the above speech, in which he dissented to the compensation for disturbance scheme in regard to non-occupancy-raiyats, on the ground that the non-occupancy-raiyat had no rights. I only wish to correct this misapprehension.

"Coming now to the actual point before the Council, the arguments on the two sides respectively appear to be these. We want the non-occupancy-raiyat to have the chance of acquiring the occupancy-right. At the same time we want not to take away from the zamíndár all power of selecting a good raiyat and all power of regulating the rents of his raiyats. In respect of the former I have always supported the position that the zamíndár should have the power to eject a raiyat at the end of an initial lease. Unless you give him that right I do not see how, if he lets in accidentally an unsatisfactory, cantankerous or turbulent man, he is to get rid of him. I think it is fair he should have some selection in the first letting of his land. On the other hand, we want the

1885.]

[*Sir S. Bayley; Bábú P. M. Mukerji.*]

occupancy-right to accrue in the hands of the non-occupancy-raiyat. I have not supposed that zamíndárs will, as a rule, be anxious to eject the raiyat at the end of the initial lease. I would still believe, in spite of what the hon'ble member has said in his dissent, to the effect that in all cases the zamíndár would give a one year's lease in order to be able to eject the raiyat when he pleases, yet wiser counsels will prevail and that he will see that it is not for his interest to do so. I may mention also that the question of giving a long lease in the first instance was urged upon us by high authority, and it was considered a good deal by the Select Committee, but it was not accepted at the time. It was considered, I must confess, not so much with regard to the question of ejectment at the end of the time, as with regard to the question of compensation for disturbance. The principle of the proposal was that a non-occupancy-raiyat ought either to have a long lease or, if he only received a short one, then he ought to have compensation for disturbance. But compensation for disturbance fell through. Now the question has to be decided, is it an object to leave the zamíndár a right to select his raiyat, and to say for how long he shall have a lease in the first instance, or that we should tie his hands and say 'You shall not have a raiyat for less than five years'? I have great difficulty in making up my mind, as anybody's decision will depend upon whether he thinks the old rights of the zamíndár ought to be retained, or that the necessity of supporting the raiyat is of paramount importance. On the whole, I think we ought not to overthrow the rights of the zamíndár, and I think we have given the raiyat a fair chance of becoming an occupancy-raiyat. I am afraid also that the specific safeguard, even if unobjectionable in principle could so easily be evaded as to be valueless. On the whole therefore I incline to vote against the amendment."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that for clause (d) of section 44 the following be substituted:—

"on the ground that he has refused to agree to pay enhanced rent at a rate not exceeding double the rate of rent paid by him during the preceding five years".

He said:—"This is offered to the Council as an alternative for the expensive and tedious procedure contained in the Bill. I think it will afford sufficient protection against capricious enhancement of rent and ejectment on the ground of refusal to pay enhanced rent. This double limit is the limit which was from the time of the Rent Commission suggested as a reasonable provision not only for non-occupancy but for occupancy-raiyats."

[*Sir S. Bayley; Bábú P. M. Mukerji; Sir S. Bayley; Bábú P. M. Mukerji.*] [6TH MARCH,

The Hon'ble SIR STEUART BAYLEY said :—“The amendment means that we should get rid of the judicial lease. Now, this judicial lease is really an essential part of the protection given to the non-occupancy-raiyat, and, whatever value may be attached to the protection as it stands, I quite agree with those who think the protection will not be worth anything if a judicial lease is not permitted when the non-occupancy-raiyat's rent is enhanced by the Court. I therefore oppose the amendment.”

The amendment was put and negatived.

The Hon'ble BÁBÚ PEARI MOHAN MUKERJI moved, on behalf of the Hon'ble the Maharájá of Durbhunga, that in section 44 the following be added as a ground for eviction :—

“ (e) on the ground that he has committed waste or caused the deterioration of the soil.”

He said :—“ It has been settled by the Council with reference to the occupancy-raiyat that even he may not be allowed to commit with impunity waste on the land or cause deterioration of the soil. If the non-occupancy-raiyat, whose legal status and rights are much inferior to those of the occupancy-raiyat, does these things, I cannot think it reasonable that the Bill should contain no provision for such cases.”

The Hon'ble SIR STEUART BAYLEY said :—“ I think the Council decided yesterday that the proper penalty in such cases was not eviction but a suit for damages or for an injunction. ‘Waste’ was a word which had absolutely no meaning as applied to cultivation in this country. Why! the whole process of agriculture in this country has been described by a great authority as one of ‘spoliation of the land’. All cultivation here, if compared with the English method, would be regarded as waste, and the use of the word would introduce an extraordinary amount of uncertainty and litigation.”

The amendment was put and negatived.

The Hon'ble BÁBÚ PEARI MOHAN MUKERJI moved, on behalf of the Hon'ble the Maharájá of Durbhunga, that to section 44 the following be added as a ground for eviction :—

“ on the ground that he has, without his landlord's consent in writing, sub-divided or sub-let his holding or any part thereof, save as expressly authorised by this Act”.

He said :—“ Both the Government of India and the Secretary of State have recommended that sub-letting should be discouraged. The evils of the

1885.] [*Bábú P. M. Mukerji; Mr. Reynolds; Sir S. Bayley; Bábú P. M. Mukerji.*]

institution are well known. - If it be held an objectionable practice in the case of occupancy-raiyats, how much more so it must be in the case of non-occupancy-raiyats. Even the friends of the raiyats have urged on the legislature the necessity of provisions for preventing the evils of sub-letting, and I find that it was one of the institutions which the Famine Commission very strongly condemned in their report."

The Hon'ble MR. REYNOLDS said :—"I think the question of sub-letting is sufficiently provided for by section 85, and that of sub-division by section 88."

The Hon'ble SIR STEUART BAYLEY said :—"Sub-division is absolutely invalid without the landlord's consent in writing, and sub-letting is only validated under certain very exceptional circumstances under a registered lease."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—"I wish to point out that the provisions as to sub-letting in section 85 apply only to occupancy-raiyats, because, although the word 'raiyat' has not been qualified, the provision which it contains that a sub-lease may extend to nine years is inconsistent with the position of a non-occupancy-raiyat in the Bill."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved, on behalf of the Hon'ble the Mahárájá of Durbhunga, that to section 44 the following be added as a ground for eviction : —

"on the ground that he has disclaimed the title of his landlord before any public officer or Court".

He said :—"The result of the judicial decisions have established that in Bengal as in England a tenant disclaiming his landlord's title forfeits his tenancy. The amendment fairly summarises the results of the judicial decisions. As to the equity of the principle there can be no doubt. Nor do I see any objection on the score of principle to enacting it. A tenant can never be harrassed by false claims in this respect, for the disclaimer is entirely his own act, and unless it is reduced to writing by a proper authority he cannot be proceeded against in respect thereof. The necessity for enacting such a provision for the protection of the landlord is clear. In questions of boundary disputes or disputed title, it is common for tenants to be won over by the rival party who may not really be in possession. In common rent-suits raiyats thus gained over raise issues of title and plead adverse possession.

[*Bábú P. M. Mukerji; Mr. Reynolds; Mr. Ilbert.*] [6TH MARCH,

The whole question of title is fought out as a side issue. We are sure this hon'ble Council has no sympathy with such dishonest tenants or with the unnecessary and reprehensible fostering of litigation. In Bengal the consequences of such disclaimer are very effective checks upon false claims to hold land as rent-free, which, in the present state of the law, it is very difficult for the landholder to disprove. Justice and expediency alike demand that the judge-made law on the subject should not be repealed by implication."

The Hon'ble MR. REYNOLDS said :—"I think if the hon'ble member desired to raise this question it should have been raised in connection with section 25. Notice of a similar amendment was given and withdrawn, and I was under the belief that it was withdrawn because the position was untenable."

The Hon'ble MR. ILBERT said :—"I cannot advise the Council to give legislative sanction to what may fairly be described as an obsolescent doctrine of English law. I will not call it an obsolete doctrine, because it still appears in the text-books. But I call it an obsolescent doctrine, because it is very rarely enforced, and when attempts are made to enforce it the Courts regard it with disfavour and limit its application in every possible way.

"And it appears to me that the doctrine is even more dangerous in Bengal than it is in England. Owing to a variety of well-known circumstances, such as the fact that the raiyat usually does not derive his title from contract, to the comparative rarity of written agreements, to the absence of definite landmarks, and to the shifting from natural causes of such landmarks as exist, it is often a matter of extreme doubt whether the relation of landlord and tenant exists between two persons with respect to a particular land. And when the existence of such a relation is denied or questioned on either side, we are by no means entitled to assume that the grounds for denying or questioning it are fraudulent or improper. We have done our best, by various provisions of this Bill, to lessen the number of excuses for alleging this doubt, and to provide for cases in which it is alleged in good faith. Thus we have in section 60 carried a step further the policy of the Bengal Registration Act by enacting that where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized on that behalf, shall be a sufficient discharge for the rent, and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person. We have by another section enabled a tenant who entertains a *bonâ fide* doubt as to the person entitled to his rent

1885.] [Mr. Ilbert; Babú P. M. Mukerji; Mr. Amír Alí.]

to pay the rent into Court. We have said that when a person is sued for rent, and admits that rent is due but pleads that it is due to a third person, the plea is not to be entertained except on terms of payment into Court. And we have endeavoured to help the landlord who is in doubt whether to treat an occupant as a tenant or as a trespasser, by authorizing him to claim, in a suit for trespass, as alternative relief, a declaration that the defendant is liable to pay for the land in his possession rent at a rate to be fixed by the Court. By these and other provisions we have endeavoured to assist, as far as is practicable and reasonable, both landlords and tenants, and I am not prepared to go further."

The amendment was put and negatived.

The Hon'ble BABÚ PEÁRI MOHAN MUKERJI, on behalf of the Hon'ble the Mahárájá of Durbhunga, withdrew the following amendments:—

That in section 44 the following be added as a ground for eviction:—

"(h) on the ground that he has persistently obstructed the landlord or any person authorized by him in entering upon the holding for any lawful and reasonable purpose".

That in section 44 the following be added as a ground for eviction:—

"(i) on the ground that he is a person imprisoned for debt or convicted of any offence against his landlord or any resident cultivator of the village."

That in section 44 the following be added as a ground for eviction:—

"(j) A landlord may, in any other case, obtain a decree for eviction by giving one year's notice to quit and such compensation as the Court may consider fair and equitable under the circumstances of the case."

That in line 8 of section 45, for the words "six months" the words "one year" be substituted.

That to section 45 the following proviso be added:—

"If the landlord fails to prove the service of the notice to quit, the Court shall, on proof of his right to eject, grant to the tenant six months' time to vacate the holding from the date of the decree."

The Hon'ble MR. AMÍR-ALÍ moved that after section 45 the following section be inserted:—

"Where, after receipt of such notice and before institution of suit, the raiyat expresses his willingness in writing to pay for his holding a fair and equitable rent to be determined by the Court under section 46, clause (b), or by arbitrators appointed by the Court or by the

parties themselves, the raiyat shall be entitled to remain in occupation of his holding at the rent so determined for a term of five years from the expiration of his lease, but on the expiration of that term he shall be liable to ejection under the condition mentioned in section 45, unless he has acquired a right of occupancy."

He said:—"I have stated in my dissent that the Bill provides no efficient safeguard against the ejection of a non-occupancy-raiyat with a view to prevent the possibility of his acquiring an occupancy-right. To exemplify my meaning I have simply to point to clause (c) in section 44 which I move to omit from the Bill. It has been stated in this Council that 90 per cent. of the raiyats in Bengal possess occupancy-rights. My view is that the majority of the raiyats of Bengal, who possess occupancy-rights, possess it only by courtesy. One of the most experienced Native officers of Government in the Executive Service—I allude to Bábú Bunkim Chunder Chatterji—thus speaks on the point:—"Most of the agriculturists are tenants-at-will, and the zamíndár can eject them at his pleasure; rights of possession are in many places only chimerical; the raiyats have possession by law, but not as a fact." My hon'ble friend Dr. Hunter, in his Statistical Account of Bengal, says that 'the husbandmen seldom change their holdings, and the same land generally descends from father to son, so that most of the cultivators may be said to have a sort of occupancy, although when a dispute occurs with the superior landlord the cultivator generally loses his case'—5. Vol., page 92. Another writer of great experience ascribes this to the fact that in the *jama-wásil-báki* papers the zamíndárs constantly change the names of the raiyats. One can easily imagine that those who believe the acquisition of occupancy-rights by the raiyats is in derogation of the right of the landlords should endeavour by every possible means to prevent the raiyats acquiring those rights. One must judge of the future always by the past. Hitherto the landlords have had recourse to illegitimate methods for the purpose of preventing the acquisition of occupancy-rights; how much more will the endeavour be repeated after the recent angry discussions? Is it likely that any raiyat once let in under a registered lease will be allowed the chance of holding that specific land or any land within the *village* for 12 years or more? In the face of what has already happened, in the face of what we hear asserted every day, it is idle to say that there are no just grounds of apprehension on this score. Every raiyat will henceforth be let in under registered leases, and will be required to give up his holding on the expiration of his lease and get other land beyond the village, and this process will henceforth take place under the countenance of the law. Will such a thing be to the eventual good of the country? I believe there cannot be two opinions regarding the beneficent results accruing from a general extension of the right of occupancy. When one considers the

1885.] [*Mr. Amír All; Mr. Reynolds; Sir S. Bayley; Bábú P. M. Mukerji.*]

insecurity attached to a common tenant's position, of his consequent unwillingness to improve his cultivation, to do more than eke out a bare subsistence, the necessity for giving some substantial guarantee against frequent and arbitrary eviction will at once be realised.

“If you give some assurance to the raiyat that his holding is his own, that it would descend to his heirs, that he would not be ejected from it as long as he paid a fair and equitable rent, you furnish him with a strong motive to develop the resources of the soil. With a view to afford the non-occupancy-raiyats some protection I beg to move the insertion of the section I have read out.”

The Hon'ble MR. REYNOLDS said :—“However much I sympathise with the object of the hon'ble member, I am afraid his amendment is inconsistent with the principle, which has been already accepted, of the zamíndár's right to eject at the end of an initial lease. The Council has decided that a landlord ought to have the power to get rid of a tenant at the end of that term. But the amendment of the hon'ble member is directed to the root of that principle; therefore I think that to accept the amendment will be inconsistent with the decision of the Council.”

The Hon'ble SIR STEUART BAYLEY said :—“I oppose this amendment, because it is absolutely inconsistent with the decision which the Council has just come to.”

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—“I do not withdraw my amendment that section 46 be omitted, but I think that as a necessary result of the loss of my amendment on section 45, this amendment will also be negatived.”

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI, on behalf of the Hon'ble the Mahárájá of Durbhanga, moved that section 47 be omitted. He said :—“I think this section as it stands is altogether unnecessary. It simply tries to formulate a rule which is merely a rule of evidence on which the Courts would be guided by the general principles of the law of evidence. If the section is inserted, it will simply be superfluous. If a lease comes after a previous lease, it cannot be said that the raiyat has been newly admitted to occupation under the second lease. I think this question may well be left to the Courts.”

The Hon'ble MR. REYNOLDS said :—“This section really seems to me one of the most practical use and value in the whole chapter. A non-occupancy-raiyat is liable to be turned out at the end of an initial lease or any subsequent lease, if he has not attained rights of occupancy. His only protection is in the possibility that the zamíndár will not take the trouble to apply to the Court. The section was retained by the Select Committee, as it gives a very practical and valuable security.”

The Hon'ble SIR STEUART BAYLEY said :—“I entirely agree as to the great importance of this section. If this section were of no importance, and if the Courts would always come to the same conclusion without it, I am not sure that I understand on what grounds the hon'ble member is so anxious to expunge it. It is because it is of much value that I object to its omission.”

The amendment was put and negatived.

The Hon'ble SIR STEUART BAYLEY then moved that for section 29 the following be substituted :—

“29. The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions :—

“ (a) the contract must be in writing and registered ;

“ (b) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat ;

“ (c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract :

“ Provided as follows :—

“ (i) Nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

“ (ii) Nothing in clause (b) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled ; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

“ (iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.”

1885.] [*Bábú P. M. Mukerji ; Rao Saheb V. N. Mandlik ; Mr. Reynolds.*]

The Hon'ble BĀBÚ PEĀRI MOHAN MUKERJI said :—“ I think the draft which has been circulated embodies the conclusions to which the Council arrived at yesterday's meeting after the debate on the Hon'ble Mr. Evans' motion. I should beg only to suggest that the provisions of this section, which applies to only occupancy-raiyats, should be extended also to non-occupancy-raiyats.”

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said :—“ The only point I have to suggest is that which was referred to yesterday by the Hon'ble Mr. Evans, namely, the principle which he advocated as to occupation for three years, and which is accepted by the hon'ble member in charge of this Bill. The principle which I maintain is most definite, namely, that of the registration of a lease which is not admitted, as may be seen from the first proviso in this amendment, which runs thus :—

‘ Nothing in clause (a) shall prevent the landlord from recovering rent at the rate actually paid for a continuous period of three years immediately preceding the year for which the rent is claimed.’

“ The less determinate element is accepted, and the more determinate element is rejected. With regard to the third proviso, which runs thus :—

‘ (iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable’.

I think the term ‘specially low rate’ is very indefinite, and will lead to litigation; so also is the expression ‘in consideration of cultivating a particular crop for the convenience of the landlord’. While I was ready to accept the proposals placed before the Council and afterwards withdrawn by the Hon'ble Mr. Evans, I cannot say the same with regard to the new provisions. They are open to objections which I have above explained. By letting in oral evidence, we are upsetting one of the main principles of the Bill.”

The Hon'ble Mr. REYNOLDS said :—“ I do not wish to detain the Council after the long discussion which took place yesterday, but I regret that the hon'ble member in charge of the Bill has surrendered the principle that enhanced rent should only be enforced under a registered agreement. The importance of that principle is very great, and even under the circumstances which were so forcibly put before the Council by the Hon'ble Mr. Evans, I still think that the security of a registered agreement is so great that some inconvenience ought to have been risked in order to obtain it. The Behar

Rent Committee decided that there should be no enhancement out of Court, except under the form of a registered agreement, and that was the opinion of practical men, both official and non-official. We know the procedure under which enhancements are obtained in that province, and that there are not many enhancement cases in Behar, because they are not wanted. The landlord simply gets the patwári to put down the enhanced rent in the jamábandi and he sues on the jamábandi. There is evidence before the Council to show that that is the common way in which it is done. It is true that under this section enhancement cannot take place till after three years, but even with that limit there is great danger in allowing this if we have not the security of a registered instrument. I referred to the precedent of the North-Western Provinces Rent Act, and I was told that the cases were not parallel, because in the North-Western Provinces the agreement may be registered before a kanungo, and we have not that facility in Bengal. I do not admit that does away entirely with the parallel. We have quite as many registering officers in Bengal as there are kanungos in the North-Western Provinces, but I admit that we have not got these village officers at present, and the people are not accustomed to the registration system. But this objection will no longer apply when we have, as I hope before long we shall have, a survey and record-of-rights, and the means of maintaining it in Behar. I trust the hon'ble member in charge of the Bill will not object to put in words in the section which will exclude from the objection of that clause any local area in which arrangements have been completed for a survey and record-of-rights. There will then be no excuse that there is no village-officer before whom the registration can be made. If the hon'ble member will agree to that clause it will remove a good deal of the objection I feel to this proposal. In regard to clause (iii), as to specially low rates of rent in consideration of cultivating particular crops, I should have been better satisfied if it were confined to contracts already existing. I cannot see the necessity for future contracts under this special provision. In future it will be in the power of the landlord to make an agreement at a higher rate, with a condition that the tenant shall hold at a lower rate as long as he grows certain crops. The provision as it stands is calculated to lead to a good deal of litigation owing to its indefiniteness."

The Hon'ble MR. HUNTER said:—"My Lord; this amendment has been attacked both as to the form and as to its principle. The form of the amendment may, I think, be safely left to the hon'ble member in charge of the Bill and to the hon'ble the Law Member. But with regard to the principle embodied in the amendment, I feel bound to say that it seems to me to be both

1885.] [*Mr. Hunter; Mr. Amír Alf; Mr. Gibbon; The Lieutenant-Governor; Sir S. Bayley.*]

fair and wise. Hon'ble members of the Select Committee will be aware that I agreed to the section as it stands in the Bill with great reluctance, and I felt that reluctance afresh as I listened to the speech of the Hon'ble Mr. Evans yesterday. No one could have followed that speech without perceiving that the Bill as it stands attempts to legislate in the teeth of the established custom in Bengal. I therefore accept my Hon'ble friend's amendment as the best compromise which has been presented to us. It embodies a principle which the majority of the Select Committee desire to retain, and at the same time it removes certain defects from the section as it now stands in the Bill."

The Hon'ble MR. AMÍR ALÍ said :—" I am very loth to trespass on the time of the Council, but as I spoke against the amendment as it was proposed by the Hon'ble Mr. Evans I wish to say a few words on its present form. I desire to endorse what fell from the Hon'ble Rao Saheb Mandlik. We have introduced a most indeterminate element where there was something determinate before. We have by proviso (i) done away entirely with the beneficial effect of the preceding clause ; and with reference to clauses (ii) and (iii) I am bound to say that they appear to me so complicated, involving so many difficult considerations, that the judicial officers trying cases under these clauses may well be required to pass an examination before they are entrusted with the adjudication of those questions."

The Hon'ble MR. GIBBON said :—" I beg to record my approval of the amendment in preference to what is in the Bill. But I regret the Council did not see their way to accept the proposal of the Behar Committee, which met with the approval of the Hon'ble Mr. Reynolds. That proposal was that it should be left to landlord and tenant to come to a mutual understanding provided such agreements are in writing and registered, without determining by law the terms and conditions of the agreement."

His Honour THE LIEUTENANT-GOVERNOR said :—" I accept the compromise as a solution of the difficulty."

The Hon'ble SIR STEUART BAYLEY said :—" I think I should offer some reply to the objections which have been made. I did not altogether follow some of the severe criticisms of the Hon'ble Rao Saheb Mandlik. In regard to the first point, the vague and indeterminate drafting of the third clause, I am in the hands of the Council. I can only say that it has satisfied the Hon'ble Mr. Evans and the Hon'ble the Law Member of the Government. I think I may place

their approval against the criticism of the hon'ble member, and I think the Council may safely trust to their guidance as far as the matter of drafting is concerned.

“Then we come to the criticism of the principle involved in the amendment. The Hon'ble Mr. Reynolds objects that I have surrendered the valuable principle of enhancement by registered contract, and especially in regard to Behar. I think I value the principle of registered contracts as much as anybody can. I have always said that I look on this as a most important section of the Bill, not only from the good effect of registration in reducing and simplifying legislation, but also from its indirect educational effect on the raiyat's knowledge of his rights; but I yielded to the strong case made out by the Hon'ble Mr. Evans showing how great a change the law involves in the actual facts of everyday life, and what inextricable confusion may take place unless we take these facts into consideration, and I waited with great anxiety and earnestness to hear what reply would be made to him. I can only ask the Council whether my critics gave or attempted to give anything like a sufficient answer to these arguments, and whether it is not my duty to accept a compromise which gives distinct and definite point to our wish and anxiety that contracts should be registered in every case possible, but at the same time does not enable the raiyat to repudiate an agreement which he had carried out for 10 or 15 years, because at some long antecedent period the rent was low and no subsequent contract could be produced. Defence of such a position was absolutely impossible, and I do not think the Council will be wrong in accepting this compromise. Then I come to the suggestion which the Hon'ble Mr. Reynolds made with regard to the example of the North-Western Provinces Rent Act. He said rightly that the parallel was not exact. Granted that we have a number of registering officers equal in number to the kanungos of the North-Western Provinces, yet the actual difficulty was not in the number of officers but with regard to a record-of-rights being prepared and maintained. In the North-Western Provinces you have such a record, in Bengal you have not, nor have you a registration of rents or the machinery to maintain it. The hon'ble gentleman asked whether I could not see my way to provide that, when Chapter X of the Bill comes into force in any place, this proviso should cease to have effect; that is, that we should insist on the contract being registered before a Revenue-officer. Chapter X refers to the preparation of a record-of-rights; it does not provide either for the maintenance of that record, or for the correction of it or for the control of the officers who have to keep it up. Consequently, Chapter X alone will not give

1885.] [Sir S. Bayley; Bábú P. M. Mukerji; Mr. Quinton.]

the facility or the security which the North-Western Provinces system now gives. These matters are, however, within the competence of the Lieutenant-Governor's Council to legislate for, and I will point out that the last section of the Act gives the Lieutenant-Governor power to legislate for the amendment of the Act; and should the time ever come when the system in Bengal is in this respect on all fours with the North-Western Provinces, then it will be quite in the power of the Lieutenant-Governor to assimilate the system in Bengal to the system in the North-Western Provinces, because then the two systems would be on entirely the same basis."

The amendment was put and agreed to.

The Hon'ble BĀBÚ PEĀRI MOHAN MURKERJI moved, on his own part and on behalf of the Hon'ble the Mahārājā of Durbhunga, that section 48 be omitted. He said:—"The institution of payment in kind is one of the oldest institutions in the country. It has always worked very satisfactorily. It is free from those sources of dispute and litigation which are inseparable from money-rents. It involves no suits for enhancement or abatement of rent. The benefits of a rise in the price of produce are shared both by the landholder and his tenant without the interference of Courts. The tenants are not driven into debt, and if they have to borrow they borrow from their landlord, whom experience has shown to be a much less exacting creditor than the village-usurer. The landholder participates in the profits and losses of the cultivation, and in districts like Patna and Gya, where the *bhaoli* system obtains, the landholder co-operates with his tenants in the cultivation. It is the landholder who clears the water-channels and maintains the embankments. If the works were left to individual raiyats, they would be wholly unable to maintain the works with the limited means at their disposal, and cultivation would come to a deadlock. It would be therefore very inexpedient to give either of the parties the right to make capricious claims for the conversion of produce-rents into money-rents, and I think it would be in the interests of both landholders and raiyats if this section were omitted."

The Hon'ble MR. QUINTON said:—"My hon'ble friend started by saying that payment of rent in kind was for the mutual advantage of the raiyat and the landlord. He thought the parties themselves were the best judges of their own advantage; and if they find it is for their mutual advantage, neither party will apply for commutation. I would point out that the rule we propose to apply is in force in the North-Western Provinces and the Central Provinces, in which large tracts are under the system of cultivation known as *bhaoli* tenures.

I do not propose to detain the Council by a discussion on the advantages or disadvantages of the *bhaoli* system: on the one hand, it benefits the landlord in seasons of prosperity, on the other, it protects the raiyat from calamities of season. But we think the principle is a sound one that either party to whom it is an advantage should have the option of applying for a commutation of rent. On these grounds I oppose the amendment."

The Hon'ble SIR STEUART BAYLEY said:—"I cannot altogether agree that the doctrine which the hon'ble mover of the amendment has laid down, to the effect that the payment of rent in kind is free from dispute or litigation, is the correct doctrine on the subject, because I have spent a great part of my life in districts where such holdings are common, and my experience is directly to the contrary. I am not 'one of those who look on payment of rent in kind as in itself an evil which ought to be got rid of. That opinion is very commonly held, and at one time it was held strongly by the Board of Revenue, and it was then their policy to discourage it in every way. This perhaps accounts for the absence of all provisions for dealing with it from Act X of 1859. I have myself seen the great advantage of it. The system is one under which in a bad season the landlord shares the risk, and the raiyat never has to pay more than a certain share of what he reaps; it enables him to tide over a very bad year without being utterly broken down, as he would be if he had to pay a money-rent. In South Behar, where the system most prevails, the country depends very much on the rainfall; water is collected in reservoirs, which are prepared partly by the raiyats and partly at the expense of the landlord; that is, the raiyats supply ordinary labour and the landlord supplies skilled labour besides giving the raiyats a meal during the time they are at work; and this reservoir supplies the smaller channels, the whole cultivation depending upon it. I should be sorry to see a sudden stoppage put to that system. But there is no question that cultivation under the *bhaoli* system is careless and unprogressive; the raiyat knows that the full advantage of whatever better cultivation he may make will not go to himself. I think the hon'ble member's objection would have had great force if the Bill provided, as the original Bill did, that the raiyat or the landlord might demand absolutely and in every case to have a commutation in money; but we have now simply given the right to apply for commutation, and have also given the Revenue-officer a discretion to refuse. It is not possible to lay down definite rules to guide the Revenue-officers whether the application should be granted or not. The circumstances are so diverse that it will be impossible to do it. Speaking for myself, I could easily decide in some cases whether it would be good or bad.

1885.] [Sir S. Bayley; Mr. Amír All; Bábú P. M. Mukerji.]

Unquestionably where the interests of a great number of raiyats are concerned, where one reservoir supplies a number of homogeneous holdings with water, it will be entirely wrong to grant the application of an individual raiyat; but where we have to deal only with the holding of an individual raiyat, where this does not depend on one general system of irrigation, I do not see why he should not be allowed to commute. Again in regard to the landlord, the *bhaoli* system is a good one for a small landholder, who can look after the proceeding himself, but for a large landholder, who has to trust to agents, it is a bad one. It allows an enormous amount of simple cheating by the landlord's agents and against the landlord's agents by the raiyats. We must leave it in each individual case to the Revenue-officer, who goes to the spot to decide. I am told that no hardship or injury to the raiyats under this system is made out. This I must absolutely contradict. I would refer you to the opinion of the Commissioner of Patna who succeeded me. He defends the system on the whole on the same grounds as I do, but says it leaves the raiyat at the mercy of the landlord's agents.

“ Similar but much stronger remarks are made by the experienced Deputy Collector whose words are quoted by the Behar Rent Committee, and are brought forward by them as the foundation of their recommendation. The proposal that commutation should be allowed was originally made by that Committee and adopted by the Rent Commission, and I find it in every subsequent proposal in regard to legislation for Behar.”

The amendment was put and negatived.

The Hon'ble MR. AMÍR ALÍ by leave withdrew the amendment that in line 3 of section 48, for the word “exceeding” to the end of the section, the following be submitted:—

“exceeding one-fifth of the gross produce of the land in staple food-crops, calculated at the price at which raiyats sell at harvest-time.”

The Hon'ble BÁBÚ PRÁRI MOHAN MUKERJI, on behalf of the Hon'ble the Mahárájá of Durbhunga, by leave withdrew the following amendments:—

That in the event of his last preceding amendment not being carried, in clause (a) of section 48, line 2, for the word “registered” the word “written” be substituted.

That in clause (a) of section 48, line 3, for the word “fifty” the words “one hundred” be substituted.

That in clause (b) of section 48, for the word "twenty-five" the word "fifty" be substituted.

That in lines 4 to 7 of section 49, the words from "and after", &c., to the end of the section, be omitted.

That in the event of his last preceding amendment not being agreed to, in line 4 of section 49, the word "written" be omitted.

That in line 6 of section 49, for the word "six" the word "one" be substituted.

The Hon'ble MR. GIBBON moved that for section 49 the following be substituted :—

"An under-raiyat shall not be liable to be ejected by his landlord, except—

"(a) on the expiry of the term of a written lease ;

"(b) when holding otherwise than under the terms of a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord."

He said :—"The subject of sub-letting by an occupancy-raiyat to another person was found to be a difficult one in Committee. I contended we should give the under-tenant as much protection as it is possible to give him ; that it is necessary when sub-letting that the agreement should be by written lease, not necessarily a registered one ; that when an occupancy-raiyat sub-lets his lands on a verbal agreement the sub-tenant should, in the case of his landlord wishing to eject him, be entitled to hold at a judicial rent for three or five years, or that the sub-tenant should receive the same protection as is to be provided for the non-occupancy-raiyat under the Bill. But the Committee did not see their way to this ; the only suggestion they adopted was that, when a sub-raiyat was let in on a registered lease, it should be for a term of years. I admit with reference to a sub-lessee that the Committee have given a sub-lessee on a registered lease every protection possible short of making him an occupancy-raiyat ; he is to be let in for a term not exceeding nine years ; the lease is also to be treated as an incumbrance on the holding. Under the present law sub-letting is not controlled and a sub-lessee receives no protection. If the tenant acts in collusion with the landlord, it is in the power of the occupancy-raiyat to dispute the sub-lease and avoid all liability ; the occupancy-raiyat may surrender or abandon his holding, and the sub-lessee receives no protection. There are two kinds of sub-lessees ; one is the capitalist, the other the poor

1885.] [*Mr. Gibbon; Mr. Hunter; Mr. Amír Alí; Sir S. Bayley.*]

raiyat; the capitalist has had every protection given him under the Bill, and the defects of the present law are as regards the capitalist sub-tenant to be remedied under the Bill; but the poor raiyat, who is let in on a verbal lease, except that he can only be ejected after six months' notice, receives no further protection. Section 48 provides that the landlord can only sue for a rent not exceeding 50 per cent. over his own rent if on a registered lease, and 25 per cent. if on a registered agreement; it is to this extent only that he gets protection. Occupancy-raiyats who sub-let on bhaoli agreements give no written leases and may eject their tenants at pleasure under the Bill; if they hold their lands at a money rental they might have to forfeit a portion of the outturn crop, but the hardship to the sub-tenant is the same. I propose that he shall only be liable to ejectment on the expiry of a written lease, or when holding on a verbal engagement, or on notice to quit served in the year previous to the one at the end of which he is to be ejected. This will in all instances insure him one year and a half's possession of the land. That is the least protection we can give him; for the poor raiyat is entirely dependent for his living on the property he holds, and we give him no protection except that of six months' notice; he should receive at least a year and a half's notice."

The Hon'ble MR. HUNTER supported the amendment:—He said:—"One of the acknowledged defects of the Bill as it stands is the scant protection which it gives to the under-tenant. The Select Committee clearly perceived this defect; but they did not so clearly see their way to remedy it. I regard my hon'ble friend's amendment as a fair and very moderate attempt to supply what I have always felt to be an omission in the Bill. Its effect will only be to render the eviction of an under-tenant a somewhat more difficult and tardy process. I would press on those who have not hitherto seen their way to agree with my hon'ble friend and with myself in this matter, that the under-tenant is the tenant of the future throughout large areas of Bengal, that already his numbers have become a most serious problem, and that he is the only class of tenant for whom the Bill has failed to make any adequate provision."

The Hon'ble MR. AMÍR ALÍ also supported the amendment. He said:—"I think the reasons which have been advanced by the hon'ble mover of the amendment are very cogent, and it is unnecessary for me to add anything further."

The Hon'ble SIR STEUART BAYLEY said:—"I am very sorry I do not see my way to accept this proposal; the first part of the amendment, I think, unnecessary, as it is a part of the present law; if you hold under a lease you can only be ejected on the expiry of the lease. With regard to those who hold without

[*Sir S. Bayley ; Mr. Gibbon.*] [6TH MARCH, 1885.]

written leases, the law provides for a notice of six months, and I do not think it is shown to be really necessary that we should give him 18 months' notice ; on a notice of six months he should be able to move elsewhere and take up another holding."

The Hon'ble MR. GIBBON said in reply :—" With reference to a written lease, my reason is that that may be an inducement to holders to give written leases, so that they may at the end of the lease eject without notice, whereas without a lease they are bound to give notice. The giving of written leases should be encouraged as much as possible."

The amendment being put, the Council divided :—

<i>Ayes.</i>	<i>Noes.</i>
The Hon'ble G. H. P. Evans.	The Hon'ble J. W. Quinton.
The Hon'ble H. St.A. Goodrich.	The Hon'ble Peári Mohan Mukerji.
The Hon'ble H. J. Reynolds.	The Hon'ble Rao Saheb Vishvanath
The Hon'ble W. W. Hunter.	Narayan Mandlik.
The Hon'ble Amír Alf.	The Hon'ble Sir A. Colvin.
The Hon'ble R. Miller.	The Hon'ble Sir S. C. Bayley.
The Hon'ble T. C. Hope.	The Hon'ble C. P. Ilbert.
His Excellency the Commander-in-Chief.	Lieutenant-General the Hon'ble T. F.
His Honour the Lieutenant-Governor of Bengal.	Wilson.
	The Hon'ble J. Gibbs.

So the amendment was agreed to.

The Council adjourned to Monday, the 9th March, 1885.

D. FITZPATRICK,

SIMLA ;
The 28th April, 1885.

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*Secretary to the Government of India,
Legislative Department.*

Abstract of the Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Monday, the 9th March, 1885.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G.,
G.M.S.I., G.M.I.E., P.C., *presiding.*

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble T. M. Gibbon, C.I.E.

The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.

The Hon'ble H. J. Reynolds.

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

The Hon'ble Peari Mohan Mukerji.

The Hon'ble H. St. A. Goodrich.

The Hon'ble G. H. P. Evans.

The Hon'ble J. W. Quinton.

BENGAL TENANCY BILL.

The adjourned debate on the Bill was resumed this day.

The Hon'ble BABU PEARI MOHAN MUKERJI moved that sub-section (2) of section 50 be omitted. He said :— "This sub-section is a reproduction of what is known as the rule of 20 years' presumption. It raises a presumption of fixity of rent in favour of all raiyats who might prove payment of rent at rates which have not changed for 20 years before suit. Such a rule might have been reasonable in 1859, when there was no complete Code of the Law of Evidence in the Indian Statute-book, and when proof of payment of a fixed rent since 1839 might have raised presumption of possession since 1793. But what justification can there be for such a rule now that we have a Code of the Law of Evidence, which deals specifically with the subject of presumptions, and when proof of payment of

rent at uniform rate since 1865 can reasonably raise no presumption whatever that the same rent had been paid since 1793? The injustice of this rule of presumption cannot be better shown than by referring to the fact that in a vast majority of cases landholders have been unable to rebut it. And yet of the thousands of cases in which it has been held by virtue of this presumption that the lands have been held at a fixed rent since 1793, a large majority must have been cases of holdings created subsequent to the days when from half to two-thirds of these provinces were barren waste. This was forcibly shown the other day by the Hon'ble Mr. Reynolds by means of the statistics he produced of the enormous increase in the number of villages since 1793. Contrary, therefore, to its original scope and object, the rule has operated like a rule of prescription or limitation to create rights where none existed before. If the presumption was difficult to rebut in 1859, how much greater must be the difficulty as years roll on? A large majority of the landholders having come to the possession of estates by purchase at public sales, they have no means whatever at their disposal to rebut the presumption which the law raises in favour of the raiyat. In an enhancement-suit a raiyat has simply to set up a plea of fixity of rent, and in more than 95 cases out of 100, at least in Bengal, the plea prevails. Having been unable in most cases to get any records from the former proprietors, or to preserve them from the influences of climate when they get them, the landholders find themselves absolutely powerless to prove that a holding was created, or that the rent payable on it has changed since 1793. It is not because the provisions of the present law regarding enhancement of rent are unworkable, but because of the powerlessness of landholders to rebut the 20 years' presumption that there has been practically no enhancement by suit in Court since 1859. I will read to the Council the opinions of the Hon'ble Mr. Reynolds and of a few experienced judicial officers on this question. The Hon'ble Mr. Reynolds said :—

'Allowing all due weight to the arguments of the Commission, it is to be remembered that the presumption was first introduced by Act X of 1859, and that it was then necessary for the tenants to prove a uniform rate from 1839. It is now only necessary to prove such uniform payment from 1861. As there is reason to think that rent-receipts have been much more regularly given and much more carefully preserved during the last 20 years than during the 20 years which preceded them, it seems to follow that the lapse of time has made it more and more easy to raise the presumption and more and more difficult to rebut it. Nor can it be denied that auction-purchasers labour under a special grievance in this matter. If it be said that they may be expected to regulate their bids accordingly, it may be replied that it is not for the public interest that estates should sell below their value on the ground that the circumstances of the sale facilitate the advancement of fraudulent claims by the tenants.'

1885.]

[*Babu P. M. Mukerji.*]

“ Mr. H. L. Dampier said :—

‘ The consideration of the 20 years’ presumption is again invited by Government. I have given the question all the consideration of which I am capable, and I find no reason to depart from the views which I expressed at length in the report which I submitted to Government on the 19th May, 1881, on Mr. Reynolds’ draft Bill. I then, after examining the question, said in concurrence with the views then held by Mr. Reynolds, that on the whole I would accept 1839 as the starting point for the presumption, as being the most likely to bring the effect of the presumption into accord with the actual rights which it assumes.’

“ Mr. E. E. Lewis said :—

‘ The 20 years’ presumption may be abandoned. During the last 25 years the right to hold at fixed rates has been in most cases enquired into, and it would now suffice to call on all who have such a claim to register themselves once for all. This may lead to some present litigation, but the matter would be settled finally. To this arrangement the zamindar could have no objection.’

“ Mr. J. Tweedie said :—

‘ The presumption becomes year by year less likely to be true, and probable truth is the only justification for a legal presumption.’

“ Babu Nuffer Chunder Bhutta said :—

‘ The 20 years’ presumption, indeed, works injuriously, especially as against auction-purchasers. Since the passing of Act X of 1859 it is now nearly 25 years ; so that the owner of a holding that was created even within five years of the passing of that Act may now claim the presumption. In order to obviate this absurdity the period should be increased to, say, 30 years, so that it may be put beyond all doubt that the holding was in existence at least some time before the passing of that Act.’

“ Babu Sree Nath Roy said :—

‘ In cases of enhancement the question of the nature of the holding would invariably be put in issue, and the 20 years’ presumption in favour of the tenant would be too strong for the zamindars to overcome. True, this rule has been in force for the last quarter of a century, but experience tells us that there was scarcely a case of enhancement in which the plea of uniformity of rent for 20 years was not taken among others. If the present Bill passes into law without modifications, the natural consequence of this provision, as well as of certain others I have stated elsewhere, would be that measures will not be wanting to vary the rents or to concoct evidence to that effect, and nobody would know rest and contentment in consequence of the disputes and the litigations which would ensue.’

“ Syed Moazzim Hossain said :—

‘ The retention of the 20 years’ presumption rule (section 64, sub-section 2) is no longer necessary in these days. Since the passing of the Act of 1859 every raiyat is expected to

be prepared with 20 years' rent-receipts and shift the onus on the zamindar, who is hereby placed at a greatly disadvantageous position, having to prove his case by production of collection-papers from the Permanent Settlement, which they might be at a loss to preserve. If the Court disbelieve them, there is no other means left to rebut the presumption. The rule, however, goes very harshly against those proprietors who have shown forbearance, particularly towards certain classes of landowners, such as widows, minors and auction-purchasers. The rule practically stops enhancement. If, however, a presumption is to be retained, the period of 20 years should be counted from before the passing of Act X of 1859; otherwise there would be no end of litigation, and no end to the amount of fraud, perjury and collusion between raiyats and zamindars' agents, and this will prove highly injurious to the just rights and interests of landholders. It would be better to stop enhancement by law than to propose such changes, which will tend to no benefit of the landlord, and by which the raiyat will unnecessarily lose his time of cultivation and suffer in purse in the bargain.'

" More than two hon'ble members have spoken of the new facilities for enhancement of rent which the Bill gives to the zamindars. It would have been more correct to say that the rights of landholders had been in this respect seriously curtailed, and greater obstacles have been placed in their way than what existed at present. I need only mention the provisions about limitation of two annas in the rupee, the reduction of the increase by one-third in working out the rule of proportion, the material alterations made on the grounds of enhancement, and the provision about progressive enhancements, to show what I mean. The landholders have repeatedly represented to the Government that they are perfectly satisfied with the principles of the present law on the subject of enhancement of rent, and that it is the rule of presumption which has hitherto practically barred all enhancement by suit in Court. The injustice of the rule of presumption is further clear from the fact that with all their prestige and influence, and with all the advantage they have over private landholders in the possession of a well-organised system of records, Government have always avoided this rule of presumption as regards their own estates. The presumption is quite the other way as regards Government estates. There is not only no presumption of fixity of rent in any case, but the law also presumes that the assessments made by the Settlement-officer are just, and throws on the raiyat the onus of proving that they are excessive or unjust. The Bill has made no alteration whatever in the matter of this rule of presumption in the interests of private landholders, although it contains an express provision for exempting a majority of Government estates from its operation; To summarise my objections to this rule of presumption, I urge that it is opposed to the recognised principles of evidence; it has

1885.]

[Babu P. M. Mukerji ; Mr. Quinton.]

operated to deprive landholders of their just dues ; it raises a presumption of fact which most landholders, and specially auction-purchasers, find it impossible to rebut ; it is condemned by experienced judicial officers ; and, lastly, that the desire of Government to exempt their own estates from its operation clearly shows its injustice."

The Hon'ble MR. QUINTON said :— " I think in the presence of His Honour the Lieutenant-Governor and the Hon'ble Mr. Reynolds it will be useless for me to make any remarks on the conditions and status of the Permanent Settlement in Bengal. But with regard to the particular objection that Act X of 1859 protected from enhancement rents which remained unchanged from the time of the Permanent Settlement, I may say that that provision has never been objected to as other than equitable, and we have heard in the discussions which have taken place on this Bill several times that it gives rights to a large number which it is practically impossible for the people to obtain, and is likely to lead to a state of mind and temper in a law-abiding people which might induce them to leave off submitting their claims for the decision of the Courts and to resort to other means of obtaining justice. These considerations were no doubt present in the minds of the framers of Act X of 1859 when they enacted that a tenant who held at an unchanged rate of rent since the time of the Permanent Settlement should be protected against enhancement, and they went on to add that he should not be required to prove that there never had been any change in his rent during the first 70 years from the date of the Permanent Settlement till the passing of Act X of 1859. If they allowed any such provision to remain unqualified in the Act, it would be nothing more than a dead-letter. Therefore they said that in order to establish the right, if the tenant could prove that he had held at the same rent for 20 years, then the presumption should arise that he held at such rent from the time of the Permanent Settlement. But until he proved that he had so held for 20 years the presumption did not arise ; and, if the landlord could prove that in one single year from the time of the Permanent Settlement there had been a *bonâ fide* change of the rent, the presumption would be rebutted. This provision must appear to any one to be a perfectly reasonable one, and I am glad to hear the hon'ble member admitted it was when that Act was passed. This section does, therefore, but continue that principle of law in the same manner as the principle in English law that a thing is beyond legal memory when it happened at a time when the memory of man runneth not to the contrary. This shows that such a presumption is not so contrary to all principles of equity and justice as the hon'ble member has stated.

" At the time when the Act was passed it was extended to the North-Western

Provinces, five districts of which were wholly or partly under permanent settlement, and this provision was, therefore, in force there. In 1873 a fresh rent law was enacted for the North-Western Provinces, and these provisions were continued in that law. Again, in 1881 the rent law of the North-Western Provinces came under revision, and the same provisions were again re-enacted. So that I may say that the legislature in India adopted the principle 25 years ago and re-affirmed it on at least two occasions since. In the same way we held that it would be unreasonable to require a raiyat to prove 12 years' continuous occupancy in the same tenure, and we therefore raised a presumption in his favour which the landlord could rebut. Under these circumstances I do not see how the presumption can be criticised in such unqualified terms of condemnation as the hon'ble member has used. He says many judicial officers have stated that it works hardly on the landlord ; the tenant has got to prove that he has held for 20 years at the same rent ; whereas the landlord has only got to prove that the rent has been changed during one single year. If the landlord has failed to prove this, on what ground can it be said that the presumption works hardly on him ? If the landlord has failed to prove this, is it not fair to suppose that the presumption that the rent remained unchanged from the time of the Permanent Settlement is in accordance with the facts ? I do not understand how the argument brought forward by the hon'ble member can be admitted. I have no doubt the Hon'ble Mr. Reynolds and His Honour the Lieutenant-Governor will supply any omission which there may be in my answer when applied to the circumstances of Bengal. I can only say that I cannot see the force of the argument."

The Hon'ble MR. REYNOLDS said :—" As the hon'ble member has referred to an opinion which was formerly expressed by me, I should like to be permitted to say that fuller reflection has satisfied me that my opinion was a mistaken one. I was right in saying that in many cases in which the presumption had been used against auction-purchasers it had effected what was not intended by the original framers of the rule ; but I failed to take sufficiently into consideration the vast majority of cases which were never brought to trial, because the existence of the presumption had deterred the landlord from venturing to raise the question. In those numerous cases I believe great hardship and injustice would be done to those who were in the minds of the framers of the rule, and who, if the law were now altered, would be quite unable to show that they had held their lands at rents which remain unchanged from the time of the Permanent Settlement. The number of such cases is very great, and I think the injustice which the proposed amendment would cause ought to deter us from making any change. The hon'ble member

1885.]

[*Mr. Reynolds ; Mr. Gibbon.*]

has referred to my opinion and those of some officers, but I should find no difficulty in bringing quite as many opinions against any change in this provision. Then, as to the statement which has been made that the Government keeps itself clear from the operation of the rule and does not allow the presumption to be raised in its estates, I am not aware what justification there is for that statement : I do not think there is anything either in the present law or in the Bill which exempts Government estates from the operation of the rule. But the presumption does not naturally arise in the case of temporarily-settled estates. In permanently-settled estates, where the raiyat has shown that his rent has remained unchanged for 20 years, the presumption arises that he has held at such rent from the Permanent Settlement. But in estates where the revenue has been periodically altered, the revenue being based on the rent, the presumption is not that the rents have been unchanged but that they have been changed. If a tenant in a Government estate can show that his rent had remained unchanged for 20 years, the presumption would apply to him, and he would be entitled, unless the presumption were rebutted, to continue to hold at that rate. But the great mass of raiyats in Government estates would be unable to establish any such claim, because the fact of periodical changes in the revenue is in itself a presumption that the rent must have varied."

The Hon'ble MR. GIBBON said :—" If this is a Bill, which it is presumed to be, to remedy the wrongs which were committed under previous legislation, I am strongly of opinion that the presumption, as it stands in the Bill, should be modified or it should be omitted altogether. If the wrongs of the raiyats are to be remedied, so ought the wrongs of the landlords. It is a wrong to give any one class of occupancy-raiyats any privilege which their brother raiyats do not possess ; and that wrong Act X of 1859 committed. I believe that it was never intended at the time of the Permanent Settlement to allow any class of raiyats to hold their lands at fixed rents—certainly not to afford them the means of acquiring such a right in the future. Section 60 of Regulation VIII of 1793, on which most people who have claimed such a right for the raiyat base their claim, says distinctly that the section shall not apply to Behar ; therefore, if the Regulation on which the claim is based makes a distinction between Bengal and Behar and exempts Behar from its operation, nothing in that section could have intended that any class of raiyats in Behar should hold at fixed rates. Under this Bill we are making the right to hold at fixed rates more valuable than it is at present ; we are allowing the raiyat to acquire rights under this presumption which even Act X of 1859 never contemplated. We are allowing the raiyat the right to sell, the right to sub-let, guarding him against his sub-lessee acquiring rights under him. We are allowing him to

destroy the land, to build on it and to do whatever he likes with it; we are making him the actual proprietor of the land and his position a more enviable one than that of the zamindar. I think it, however, impossible to do away with this section altogether. Vested rights have accrued which cannot be set aside, but we can avoid allowing a raiyat to acquire rights in the future that he does not possess at present. I therefore think the hon'ble member's second proposal is a sound one, namely, that the presumption should run from a fixed date, to eliminate its accumulative property. But the hon'ble member also proposes to set aside the presumption with regard to tenures, as well as with reference to raiyats; there I think he is wrong, for under the Permanent Settlement Regulations *istimrari* and other tenures existed and had such rights."

His Honour THE LIEUTENANT-GOVERNOR said:—"The hon'ble member in supporting the amendment which we are considering has based his argument on the fact that there is a preponderance of opinion amongst those who have been consulted against the justice of this presumption. I contest that statement. We took a good deal of trouble to analyse the reports when we submitted to the Government of India the letter of the 15th September. In that letter we showed that the result of the examination of the different opinions which came before us was that there is a very large majority in favour of retaining the presumption. The Commissioners of Patna, Burdwan, the Presidency Division and Dacca were unanimously in its favour. With regard to the judicial authorities on whose opinions the hon'ble member relies, I find it stated that a very few would annul it altogether; a larger proportion would modify it, but a still greater number would retain it. There is also the strong opinion of the Native Judge of Burdwan, who said that the rule had worked remarkably well since 1859 without putting any hardship on zamindars. Therefore I contend the authorities are against the hon'ble member. It has been said that the burden of proof lies upon us to establish the equity of this rule of presumption. But the fact is that the rule finds a place in the law as it stands, and it devolves upon those who are opposed to it to give more than general grounds for its abolition.

"The hon'ble member then goes on to speak against the good faith of the Government with regard to the management of its own estates. The other day he told the Council that though the Government are limiting the power of enhancement in the case of zamindars we take care not to bind ourselves by any rules of limitation, and he quoted a number of *khas mahals* in which enhancement of revenue or rent had been excessive. Whatever may have happened before this Bill becomes law is not

1885.]

[*The Lieutenant-Governor ; Sir S. Bayley.*]

in point. When this Bill is law the Government will be bound by it exactly in the same way as the zamindar will be bound. But as regards the particular cases to which he alludes, I would point out that the hon'ble member failed to refer to a fact, which will remove the whole gravamen of the charge, that the enhancements in a majority of those cases were of *dearah* lands in which the area of cultivation had increased, and which would therefore naturally come under assessment. That is not enhancement properly so-called, but simply the assessment of rent on an increased area of cultivation. My hon'ble friend Mr. Reynolds has already to some extent answered the charge that the Government takes care to protect itself against the operation of the rule of presumption, and I may add that I really do not know what justification the hon'ble member has for the statement which he makes. He brings forward no instances in support of his charge, but only makes a general statement to that effect. I can say against him only this, that the other day in the particular case of enhancement with regard to the Malinagor village in the Poosa estate, to which the attention of the Council has been more than once directed, where the tenants stated that they had held for 20 years at a uniform rate of rent, that plea was sustained against Government by the Munsif, who threw out all the cases. If the hon'ble member is still determined to press his amendment for the omission of a rule of law the retention of which most of the authorities have recommended, I shall certainly oppose the motion."

The Hon'ble SIR STEUART BAYLEY said :— " I cannot recommend the Council to accept the proposal for the abolition of this rule of presumption. I have to deal now with the arguments on which the proposal for abolition is sustained, not with any suggestion which may be made for its modification. I do not think the question of the abolition of the rule is within the range of practical politics. The hon'ble gentleman first based his argument for abolition on the ground, as he led the Council to suppose, that the majority of opinions was against it ; but, as has been pointed out by His Honour the Lieutenant-Governor, the majority of opinions is not against it. In quoting these opinions the hon'ble member, as the Lieutenant-Governor pointed out, omitted to mention the fact that the Conferences of Burdwan, of the Presidency Division, of Dacca, of Patna and Orissa are in favour of retaining the rule. Again, as regards the opinions of judicial officers, of which he made a good deal, the tendency is in the opposite direction to what he led the Council to suppose. Babus Mohendro Nath Mitra, Banimadhub Mitra, Amrit Lal Chatterjee, Mohendro Nath Bose, Jogodishvar Gupta, Bipin Chunder Rai,

Khetter Prosad Mookerjee, can all be quoted as judicial officers who are in favour of retaining the presumption as it stands, and I can show that a very large majority of them are against abolishing it altogether. Then he said that the mast majority of estates since this presumption became law have changed hands by the operation of the sale law. I cannot conceive what has led the hon'ble member to suppose so, for I find that the average annual number of estates sold in Bengal is one out of every 245, and in the course of 20 years that would not make one-tenth part, much less a majority. I should like to know on what authority he says that 95 per cent. of the estates have changed hands. I can only say that that statement is not borne out by the papers before the Council. But I was still more astounded by the assertion that the Government has made a special law in its own behalf, and has thought fit to exempt its own estates from the operation of this principle. That is not the case. What the Government has done, as the Hon'ble Mr. Reynolds has explained, is to maintain the existing law to the effect that in temporarily-settled estates this presumption does not arise, for the simple reason that where there are periodical alterations of revenue, involving periodical settlements of rent, the presumption is that the rent has not remained unchanged. If, however, a man can prove that he has held at a fixed rate from the time of the Permanent Settlement, his rent cannot be altered ; but in regard to this presumption there is absolutely no distinction at all between Government and other estates. There are temporarily-settled estates which are not the property of Government. No distinction is made between these particular estates and temporarily-settled estates under the Government, and, where the Government is the holder of a khas mahal which is permanently settled, there is similarly no distinction whatever between them and zamindari estates. The whole foundation of the hon'ble member's statement is absolutely incorrect, and, when he goes on to say that the Government in its settlement-proceedings has got enhancement by throwing on the raiyats the burden of proving in the Civil Court that they held from the time of the Permanent Settlement, though the statement is true as to the past, it is grossly misleading, for the hon'ble gentleman has omitted to point out that under this Bill the Government deliberately abolish the old law and the special privileges they had under it, and put themselves in regard to settlement-proceedings exactly on a par with all other landlords."

The Hon'ble MR. ILBERT said :—" I agree with the majority of the Rent Commission and of the Select Committee on this Bill in thinking that this presumption ought to be retained. I am in favour of retaining it for very much the same

1885.]

[*Mr. Ilbert ; Babu P. M. Mukerji.*]

reason as that for which I was in favour of the prevailing rate as a ground of enhancement. The twenty years' presumption is as valuable to the tenant as the prevailing rate is to the landlord, and in neither case am I disposed to remove a provision of the existing law merely because its form is capable of being described as embodying an element of fiction. The presumption arising from holding for twenty years at a fixed rate of rent is, as has been pointed out, not unlike the well-known presumption which is created by the English common law, and under which, when it is proved that a man has enjoyed rights of a particular class for twenty years, it is presumed in his favour that he has enjoyed the rights for a period whereof the memory of man runneth not to the contrary, that is to say, for a period which, according to English lawyers, commences at a point either at or near the beginning of the reign of Richard I—a date which, I need hardly say, is anterior to the Permanent Settlement. It must be borne in mind that the effect of a presumption such as this is merely to determine the point at which the burden of proof is shifted from one party to the other. Before a raiyat can obtain the benefit of this presumption at all, he must prove that his rent has not been changed for twenty years ; it is not until he has discharged this burden of proof that the presumption comes in."

The Hon'ble BABU PEARI MOHAN MUKERJI said in reply :—" It is a duty I owe to myself that I should state emphatically that when I quoted the opinions of some judicial officers with reference to the harsh working of this rule of presumption I did not say that they represent the majority of opinions on the subject or that there was a preponderating opinion in favour of my proposal. I simply said that there was a number of opinions of judicial officers in support of my view. Again, I am sorry that His Honour the Lieutenant-Governor should have thought that I mentioned the fact of the exemption of Government estates from the operation of this rule of presumption as something against the good faith of the Government. I used the fact simply as showing very clearly the injustice of this rule of presumption—not that the Bengal Government or any Government, has taken advantage of an exceptional rule for its own interested purposes, but that knowing that the application of the rule to Government estates would seriously jeopardise their interests by creating new rights where none existed before, the Government has taken care to exempt its own estates from the operation of the rule of presumption. It was said by the three hon'ble members who have spoken on the subject that I have no warrant for the statement that the rule of presumption does not apply to Government estates. I shall read to the Council the first line of a

section which contains this rule. When Act X of 1859 was passed this rule was contained in section 4 of that Act. It said, 'Whenever in any suit *under this Act* it shall be proved'; and when Act X of 1859 was repealed by Bengal Act VIII of 1869 the very same words were reproduced. Can it for a moment be contended that settlements in Government estates were made under those Acts? Is it not Regulation VII of 1822 and Bengal Act III of 1878, and after that Bengal Act VIII of 1879, which give the law for the settlement of rents in Government estates; and is there a single provision in those laws similar to the rule of presumption contained here? Again, it has been observed by His Honour the Lieutenant-Governor that I did not state to the Council the other day, when I gave the Council the result of my calculations as to the increase of so many annas in the rupee, that those settlements referred to *dearah* settlements." I took those figures from the Administration Report of the Bengal Government, and there is nothing in the chapter from which the figures were taken to show that they referred to *dearah* settlements. The chapter is headed 'Re-settlements,' and I had every right to draw those conclusions when I gave the arithmetical calculation of the amount of increase over the former revenue."

The amendment was put and negatived.

The Hon'ble BABU PEARI MOHAN MUKERJI moved that in section 50, sub-section (2), lines 5 and 6, for the words "during the twenty years immediately before the institution of the suit or proceeding" the word and figures "since 1839" be substituted. He said:—"As my amendment for the omission of the section has been lost, I propose this amendment with a view to meet the grievance which I presume to think the zamindars have clearly made out. I think it will be fair and just if the raiyat has to prove that he paid rent at a uniform rate since 1839, that is, 20 years before the passing of Act X of 1859, as was originally recommended by the Hon'ble Mr. Reynolds; and I also beg to move that in sub-section (4), after the word 'apply' the words and figures 'to an estate or tenure sold by public auction since 1859 or to' be inserted. This forms part of the amendment which was originally recommended by the Hon'ble Mr. Reynolds. If it be not desirable to do away with the rule of presumption altogether, it should be so modified as not to apply to auction-purchasers, and only to cases where uniform payment has been proved from 1839."

The Hon'ble MR. REYNOLDS said:—"I do not think the hon'ble member should again have quoted me after I had recanted the opinion I formerly expressed and told him why I believe I was then wrong. I think the two amendments now

1885.] [*Mr. Reynolds ; Sir S. Bayley ; Babu P. M. Mukerji ; Sir S. Bayley.*]

proposed will have a harsh and injurious effect, because a large number of tenants who may have thought themselves safe in preserving their receipts for 20 years would now be called upon to produce their receipts from the year 1839. When the conditions referred to in another part of the Bill are fulfilled, when there is a law requiring tenures to be registered in a public office, or a record-of-rights has been made in respect of any local area, then, and not till then, this presumption can be abolished without any danger."

The Hon'ble SIR STEUART BAYLEY said:—"I wish to point out an obvious objection to this amendment. The hon'ble member would exclude from the benefits of this presumption the raiyats of any estate which has been sold by auction. In such cases a raiyat, having kept his receipts and proofs for a period of 20 or 30 years, will fail to have the benefit of this rule of presumption, because his landlord chooses to default and the estate is sold, and he will then no longer be entitled to the benefits which the law since 1859 has secured to him. I ask whether it is reasonable or right that the status of a raiyat should be changed if the estate has changed hands. I do not think anybody would say that."

The amendment was put and negatived.

The Hon'ble BABU PEARI MOHAN MUKERJI moved that sub-section (4) of section 56 be omitted. He said:—"I consider the provisions of section 58 contain sufficient penalty for defective receipts. If a landlord refuses to give, or does not give, a receipt in the proper form giving all the particulars required, he will be liable under that section to pay to the tenant double the amount of rent paid by him. But this section provides, in addition to that penalty, a presumption in favour of the raiyat to the effect that where the landlord gives a defective receipt it will be presumed to be in full discharge of all demands from the tenant up to the date of that defective receipt; so that the penalty for giving a defective receipt is greater than for a refusal to give a receipt, although the defect in the receipt might have arisen from ignorance or oversight or carelessness of the zamindar's agent. I submit that there is no necessity for this provision, because section 58 provides for such cases."

The Hon'ble SIR STEUART BAYLEY said:—"The necessity for this provision has been felt all along. It was started with the idea of requiring receipts to contain certain specific information, which was contained in a recommendation made by the Behar Committee, who remarked very strongly about the way receipts were kept and presented in Court; and they insisted upon the necessity of the

[*Sir S. Bayley ; Mr. Gibbon ; Sir S. Bayley.*] [9TH MARCH,

receipts giving certain specific information, and on their being kept in counter-foil. This recommendation was afterwards considered by the Rent Commission and they came to the same conclusion. As the provision first stood in the Bill it was a great deal more stringent than it is now ; the giving of a defective receipt was of itself to operate as a discharge in full up to the date of the receipt ; the presumption now given is nothing if the zamindar can show that the receipt is not an acquittance in full, or that the particulars required have been *substantially* given. It will only be in the case of wilful omission that the presumption will arise."

The amendment was put and negatived.

The Hon'ble MR. GIBBON moved that in section 58, sub-section (1), for the words "six months" the words "three months" be substituted. He said:—"I would call the attention of the Council to the change about to be made by the section in the law. The present law provides that if a landlord withholds a receipt he shall be liable to damages, the present law presumes intent to defraud by withholding a receipt, but this section enacts that if a landlord refuses or neglects to deliver a receipt he shall be liable to severe penalties. The proposed section punishes for neglect to deliver, for laziness, forgetfulness on the part of the landlord. The raiyat may bring his rents but fail to bring the account on which the payment is to be entered with him, and yet the Bill will punish the landlord for neglect to deliver. It is impossible for any landlord to prove he has delivered a receipt. I know from my own experience the difficulty of inducing raiyats to receive receipts; they see the amount credited in their account and then they disappear. It is in fact often impossible to give receipts, and this Bill puts further difficulties in their way. It gives the landlord no facilities for delivering receipts, and the only way in which he can possibly give it is by sending it to the tenant in a bearing cover, which will cost him two annas. The withholding of a receipt with intent to defraud should be punished by law, but it is very necessary that the party aggrieved should be obliged to appeal to the Court as soon after the payment is made and the receipt withheld as possible to enable the Courts to judge fairly between them. I have simply provided that the term for instituting a suit under this section should be shortened, so that if the landlord does neglect to give or does withhold a receipt with attempt to defraud, he should be sued without any unnecessary delay."

The Hon'ble SIR STEUART BAYLEY said:—"I have no particular feeling in this matter: I can only say that the term of six months was fixed in Committee after a good deal of discussion."

1885.] [*Mr. Hunter ; Babu P. M. Mukerji ; Mr. Reynolds ; Sir S. Bayley.*]

The Hon'ble MR. HUNTER supported the amendment. He said :—" I think the clause as it stands will place a difficulty in the way of the landlord, and I do not think the proposed amendment will be in any way adverse to the interest of the raiyat."

The amendment was put and agreed to.

The Hon'ble BABU PEARI MOHAN MUKERJI moved that in section 58, subsections (1) and (2), after the word " landlord " the words " after demand by letter duly registered under the Post Office Act " be inserted. He said :—" It is necessary for the ends of justice that before a raiyat is allowed to sue his landlord for a penalty of double the amount of the rent, on the ground that the landlord has refused to give a receipt for the sum paid, there should be a provision in the section for a demand on the landlord in such a way that there should be no reasonable doubt as to the demand having actually been made. As it is, the section will afford very great temptation to the raiyat, after he has paid rent, to refuse to take a receipt, and then resort to the Court to recover double the amount ; he has simply to tell the Court ' I paid a particular sum ; I asked for a receipt and did not get it ; and I claim double the amount as a penalty.' I submit that some provision is necessary for the purpose of giving the landlord some protection against false claims for penalty."

The Hon'ble MR. REYNOLDS said :—" I am not in favour of this amendment, and I would remind the Council that the hon'ble member in speaking on section 56 said that the last clause of that section might be removed because section 58 provided a substantial remedy. But this amendment would really cut out all certainty from section 58, because, although it is reasonable to say that a demand should be made before the raiyat goes to Court, it will be impossible for the raiyat to prove that he made the demand by registered letter, inasmuch as he will be unable to show what the contents of the letter were. I therefore cannot support the amendment."

The Hon'ble SIR STEUART BAYLEY said :—" This proposal was moved in Committee, but was not accepted. I have a good deal of sympathy for landlords in respect to this matter, but I think the hon'ble member's amendment will scarcely secure the proof of the demand having been made, which is what he desires. A registered receipt proves nothing beyond the fact that a letter was posted : it is no proof of the contents of the letter. I think the contention of my hon'ble friend is a sound one."

[*Babu P.M. Mukerji ; Mr. Gibbon ; Sir S. Bayley ;* [9TH MARCH,
Mr. Gibbon ; Sir S. Bayley.]

The Hon'ble BABU PEARI MOHAN MUKERJI said :—“ The simple posting of the letter would, under the Evidence Act, be a presumption of the letter having been delivered, and a copy of the letter might be produced along with the post office receipt.”

The amendment was put and negatived.

The Hon'ble MR. GIBBON moved that in section 58, sub-section (2), the words “ the receipt in full discharge or ” be omitted. He pointed out that the wording of the Bill was ambiguous, and if the hon'ble member in charge of the Bill could see his way to altering the draft of the sub-section a little, Mr. Gibbon would withdraw his amendment.

The Hon'ble SIR STEUART BAYLEY consented, and the Hon'ble Mr. Gibbon's amendment was then withdrawn.

The Hon'ble MR. GIBBON moved that in section 58, sub-section (3), line 3, for the word “ shall ” the word “ may ” be substituted. He said :—“ The sub-section says that if a landlord fails to prepare and retain a counterfoil copy of a receipt or statement as required by either of the said sections 56 and 57, he ‘ shall ’ be punished with a fine which may extend to fifty rupees. My object is to make the sub-section permissive and to allow the Courts to exercise some discretion in the matter. There may be many reasons why the landlord may not be able to give a counterfoil receipt or retain a counterfoil copy of a receipt. Section 59 provides that the Government shall supply receipts in printed books. Suppose none are in stock and the landlord not able to procure them. The landlord would in that case be fined fifty rupees in each case ; the Courts would have no option but to fine him. It has been said in defence of this section that the Courts may give nominal damages. The Bill now substitutes a penalty for damages. In all cases that a penalty is inflicted and in most cases of damages the penalty carries costs—in themselves a severe penalty. I therefore wish to give the Courts a discretionary power, so that if the landlord is not to blame he should not be punished.”

The Hon'ble SIR STEUART BAYLEY said :—“ I understand that the wording of this section is adopted from the Penal Code, and there may be a strong objection to alter it ; but I think the hon'ble member's objection may be met by inserting the words ‘ without reasonable cause ’ after the word ‘ neglects,’ and I have no objection to do so.”

1885.] [*Mr. Gibbon ; Sir S. Bayley ; Babu P. M. Mukerji ; Mr. Reynolds.*]

The Hon'ble MR. GIBBON accepted this suggestion and withdrew his amendment.

The Hon'ble SIR STEUART BAYLEY then moved the following amendments :—

- (1) that in section 58, sub-section (1), line 1, after the word "landlord" the words "without reasonable cause" be inserted;
- (2) that in section 58, sub-section (2), lines 1 to 3, for the words "If a landlord refuses or neglects to deliver to a tenant demanding the same the receipt in full discharge or" the words "If a land-lord without reasonable cause refuses or neglects to deliver to a tenant demanding the same either the receipt in full discharge, or, if the tenant is not entitled to such a receipt," be substituted :
- (3) that in section 58, sub-section (3), line 1, after the word "landlord" the words "without reasonable cause" be inserted.

The amendments were put and agreed to.

The Hon'ble BABU PEARI MOHAN MUKERJI moved that section 61, sub-section (1), clause (b), be omitted. He said :—"Where the landlord or his agent refuses to accept rent when it is tendered, it should justify the deposit of rent in Court; but where rent was refused several years ago by reason of a dispute as to the amount of rent, or where the question in dispute was as to the right of the party who tendered it, there is no reason why, after such dispute has been amicably settled, that rent should be refused for all time to come. The law should not justify the deposit of rent in Court on the ground that the raiyat had reasonable ground to suppose that the rent would not be received."

The Hon'ble MR. REYNOLDS said :—"I do not think this objection can be raised on the wording of clause (b). The hon'ble member referred to a dispute which had since been amicably settled, but what the clause provides for is a case in which the tenant has reason to believe that, owing to a tender having been refused on a previous occasion, the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it. That presumes that the cause of dispute is still in active operation, and it seems to me that in such cases the tenant should be at liberty to deposit the rent in Court."

The Hon'ble SIR STEUART BAYLEY said :—“ The clause as it now stands was the subject of a good deal of discussion in Committee, and has undergone a considerable amount of alteration. It was explained fully in the Statement of Objects and Reasons, and the Committee thoroughly considered the representations of both parties. The tendency on the one side was to let the raiyat deposit money in Court when he liked, and on the other to insist on the raiyat tendering the amount at the zamindar's kachari. The zamindars objected to this provision, because they, or at least their amla, are unwilling to lose the enormous hold over their raiyats which the necessity of personally appearing at the zamindar's kachari gives to them. Formerly they had the legal power of arresting a raiyat and forcibly bringing him to the kachari. When Act X of 1859 abolished that power they declared it would be ruinous to them, and it is the same feeling which prompts them to desire the attendance of the raiyat on all occasions. The feeling is a very intelligible one, for it is by this means that an underpaid body of amla secure their perquisites; but, on the other hand, there was also a very intelligible feeling that so long as payment of the rent is secured the raiyat should not be forced to submit to an ordeal of the dangers of which he has already had experience. We have modified the section a good deal. As it stood last year it was more in accordance with the amendment which the Hon'ble Mr. Amir Ali thinks necessary; the raiyat would then be the sole judge practically whether the dispute with the landlord is a sufficient ground for depositing the rent in Court. As the section stands, the ground on which this privilege is now given to the raiyat is that rent has been refused on a previous occasion, and we have given a discretionary power to the Court to grant or to refuse the application. Under these circumstances I think the landlords' rights are sufficiently guarded.”

The amendment was put and negatived.

The Hon'ble MR. HUNTER moved, on behalf of the Hon'ble Mr. Amir Ali, that in section 61, sub-section (1), clause (b), line 3, after the word “owing” the words “to any existing dispute or” be inserted. He said :—“ The intention of my hon'ble friend is to meet a certain class of cases which sometimes occur in Eastern Bengal. Cases may arise in which it might be very difficult and a little dangerous for the raiyat to go near the office of the zamindar, and he thinks that in such cases tenants should be protected from the necessity of going near the office—an office in which he is likely to receive rough treatment. He therefore proposes this amendment.”

1885.] [Sir S. Bayley; Babu P. M. Mukerji; Rao Saheb V. N. Mandlik.]

The Hon'ble SIR STEUART BAYLEY said:—"As we have accepted the decision of the Committee against an alteration in an opposite direction, I think we ought also to retain the decision of the Committee against any alteration in this direction."

The amendment was put and negatived.

The Hon'ble SIR STEUART BAYLEY moved that in section 65, line 1, before the word "tenure-holder" the word "permanent" be inserted; and that in section 66, sub-section (1), lines 3 and 4, for the words "in respect of the holding of a non-occupancy-raiyat or an under-raiyat" the words "from a tenant not being a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat" be substituted.

The amendment was put and agreed to.

The Hon'ble BABU PEARI MOHAN MUKERJI moved that to section 74 the following *exception* be added:—

"*Exception.*—Bonus or salami paid to the landlord by the raiyat in consideration of the former allowing the latter to do an act which he is not lawfully entitled to do shall not be deemed an imposition within the meaning of this section."

He said:—"The principle of this amendment, if I recollect right, was not objected to by the Select Committee when the question was discussed. Considering the very heavy penalties which the section imposes for the collection of any sum over and above the actual rent, it is, I think, necessary that an *exception* of this kind should be expressly inserted in the Bill for the purpose of giving protection to the landlord in those cases in which he receives a bonus or salami from the raiyat for allowing him to do what he otherwise would have no lawful power to do; as, for instance, when the landlord allows the raiyat to make an excavation and take earth for making bricks. In such cases the salami which the zamindar gets from the raiyat should be exempted from the operation of this section."

The Hon'ble RAO SAHEB YISHVANATH NARAYAN MANDLIK said:—"The Government does get such fees in estates which are not permanently settled in the Bombay Presidency. Perhaps the hon'ble member in charge might reconsider the matter."

[Sir S. Bayley ; Mr. Gibbon ; Rao Saheb V. N. Mandlik ; Mr. Reynolds.] [9TH MARCH,

The Hon'ble SIR STEUART BAYLEY said :—“ We have considered the matter. We think there is no objection to the principle which the amendment lays down, but we are very much afraid of its practical operation. The substantive law has been kept as it is, and the old rulings will be applicable to it. Whatever is not illegal now will not be illegal under this Bill ; what is illegal now will continue to be illegal still. We have not ventured to touch the section, and for this reason I think it would be unwise to put in the proposed *exception*.”

The amendment was put and negatived.

The Hon'ble MR. GIBBON moved that section '75 be omitted. He said :—“ The section will, I believe, be practically inoperative in 99 cases out of 100 where it is really required, and act harshly in others where it is not necessary. The cases intended to be got at are cases in which the landlords take abwabs and cesses in lieu of enhancement of rents, and for this purpose the previous section is sufficient. Where the raiyat actually gives them of his own free accord, where they are not exacted but given in lieu of benefits received, this section as it is worded will be inoperative. Exaction means extortion ; it implies a certain amount of pressure or restraint. The present law gives damages for extortion ; the North-West Act awards compensation for extortion by illegal confinement or duress. This section says the raiyat may sue for a 'penalty' for exaction without declaring what is to constitute exaction. There is a great difference between allowing an injured person to sue for damages and to sue for a penalty. Penalties should in all instances go to the Crown and not to the raiyat ; if the raiyat is injured bodily, the Criminal Code should be sufficient to protect him. Damages would be sued for in proportion to the injury suffered. Under this section a raiyat must in every case sue for the whole amount of the penalty. He should not be encouraged to bring a civil suit for Rs. 200 and hope to receive it by way of damages where the actual loss suffered will in most instances be very slight.”

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said :—“ I agree with the hon'ble mover of the amendment.”

The Hon'ble MR. REYNOLDS said :—“ Under the present law the raiyat is entitled to sue for damages, but he cannot recover more than double the amount exacted from him. In such cases the landlord takes a comparatively small sum from each of a large number of raiyats, and it seems a mockery to tell a raiyat from

1885.]

[*Mr. Reynolds ; Sir S. Bayley.*]

whom a sum of Rs. 2 has been exacted that he may sue his landlord with the prospect, if successful, of recovering double the amount. As to the necessity for the section I may refer to the details of a case which has reached me within the last few days in connection with the Patwari Bill now before the Bengal Council. That Bill proposed to levy a patwari cess on the land, to be paid in the first instance by the zamindar, and to give power to the zamindar to recover the cess or a certain proportion of the cess from his under-tenants. In his letter, Mr. Stevenson, a missionary in the Sonthal Parganas, expresses a strong hope that that procedure will not be adopted, and he remarks that the opportunities which will be given by the Bill will be availed of for the purpose of extorting from the raiyats much greater amounts than the authorized cess. He gives a concrete example, and says:—

‘ As an example of how zamindars as tax-collectors act, I may mention a case the facts of which are before me at present. *K. M.* of the village of *P.*, of the *P.* zamindari, whose annual rent is Rs. 34-10, was asked by his zamindar to pay Rs. 5-6-9 as cesses for the year. On behalf of the raiyat I asked for an explanation of the particulars of the cesses. The explanation given was that there are three cesses to be paid—(1) the road cess, which is two pice in the rupee, but charged on double the rent ; (2) the public works cess, also two pice on double the rent , and (3) a rigwari tax, two pice in the rupee on the rent. In this way this raiyat was being made to pay 2½ annas in the rupee on his rent.’

“ In this instance the missionary personally interceded for the raiyat, who is possibly a Native Christian, and got the exaction remitted ; but he says this case is only an illustration of what is going on all around. That I think is a very strong instance of the necessity for some substantial punishment in cases such as are provided for by this section. The raiyat whose rent was Rs. 34-10 was required to pay Rs. 5-6-9 as cesses for the year. The amount which could be legally claimed from him was 18 annas, and the rest was an illegal exaction. I see that Mr. Stevenson says that it is useless to tell the raiyat that he has his remedy by going into Court and suing the zamindar for double the amount of the exaction. Therefore I trust the Council will agree that this section, which provides a penalty of Rs. 200, ought to be retained.”

The Hon'ble SIR STEUART BAYLEY said :—“ I agree with my hon'ble friend Mr. Reynolds that the penalty should be substantial. The old power of suing for damages of double the amount of the exaction is obviously useless, as it has failed to be of any effect. The hon'ble mover of the amendment argues that this penalty being by way of punishment it ought to go to the Crown, but I do not see why the raiyat ought not to have the power of suing for penal damages. The

[*Sir S. Bayley ; Mr. Gibbon ; Babu P. M. Mukerji ;* [9TH MARCH,
Sir S. Bayley.]

levy of two annas or four annas from a man is not a very serious thing, but it is a matter of public policy to put a check upon these exactions. With regard to the particular sum inserted, I may remind the Council that in last year's Bill it was Rs. 500, and it was reduced to Rs. 200 on the motion of the Hon'ble Mr. Gibbon ; but I cannot agree that the penalty should be omitted altogether."

The Hon'ble MR. GIBBON said :—" I cannot agree with the hon'ble member in charge of the Bill. On the contrary, the whole of the hon'ble member's statement goes to prove, as I have asserted, that in the majority of cases what this section is intended to hit it does not hit. I quite agree that where a man has exacted payment of any excess, that is, where force has been used, the raiyat should be allowed to sue for damages without limit, but all sums levied by way of penalty should go to the Crown. A man might pay a cess to the zamindar for four or five years, and at the end of the fifth year he may sue under the Bill for Rs. 200 as damages."

The amendment was put and negatived.

The Hon'ble BABU PEARI MOHAN MUKERJI moved that section 77 be omitted. He said :—" I do not object to the principle of this section. I think that a raiyat whose rent is fixed in perpetuity should have a right to make such improvements as are allowed by the law without any reference to the landlord. But there are two difficulties in the way by reason of which I think this section should be omitted. In the first place it will be a very difficult matter to determine whether a raiyat holds at a fixed rent or at a fixed rate of rent. If the question is referred to the Collector under sub-section (3), the Collector will have to raise a side issue in the first instance and decide the very important question as to whether the raiyat holds at a fixed rate of rent before entering upon the question referred to him, namely, whether the raiyat has the legal right to make the improvement against his landlord's consent. On these grounds I submit that the section should be omitted."

The Hon'ble SIR STEUART BAYLEY said :—" Recognizing, as we do, the force of a good deal of what the hon'ble member has said about the undesirability of raising such an important question as whether a raiyat holds at a fixed rate of rent by a side issue, we are prepared to accept the amendment, namely, to omit section 77, and to give raiyats holding at fixed rates the same rights to improve as an occupancy-raiyat. I shall therefore move in section 78 that

1885.] [*Sir S. Bayley ; Babu P. M. Mukerji ; Mr. Reynolds ; Sir S. Bayley.*]

the words 'holds at fixed rates or' be inserted. I propose this without prejudice to the substantive amendment of the hon'ble member."

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY then moved that the words "holds at fixed rates or" be inserted after the word "raiyat" in line 1 of section 78.

The amendment was put and agreed to.

The Hon'ble BABU PEARI MOHAN MUKERJI moved that in section 78, sub-section (2), line 2, for the word "raiyat" the word "landlord" be substituted, and that the words beginning with "unless" in that sub-section be omitted. He said :—"Where both the raiyat and landlord desire to make an improvement, I submit that the landlord should be given a preferential right to make the improvement. In the first place, what the raiyat may consider to be an improvement as regards his own holding might not be an improvement as regards the holdings of his neighbours. If the improvement which the raiyat proposes to make, although it may be beneficial to his own holding, is prejudicial to the holdings of other raiyats, the landlord has a right under the Bill to prevent it. It is with the view of preventing disputes between neighbouring raiyats that I think it very desirable that the landlord, whose interest it is to do common justice, should have a preferential right to make an improvement where the improvement is desired by the raiyat, instead of the raiyat being allowed a preferential right to do so against the wish of the landlord."

The Hon'ble MR. REYNOLDS said :—"I think the section embodies the proper rule, and a good deal of the objection which has been raised is provided for by the concluding words of the section, which says 'the raiyat shall have the prior right to make the improvement unless it affects another holding or other holdings under the same landlord.' Where it does not affect other holdings the Bill provides that the person who is primarily interested in the improvement shall have the preferable right to make it, and this is certainly the case with regard to a raiyat holding at fixed rates, whose stake in the land is very considerable. The same remarks apply, though in a less degree, to an occupancy-raiyat. Such a man should not be prevented from making an improvement because the landlord expresses a wish to have the first right to do so. I think the Council should not agree to the amendment."

The Hon'ble SIR STEUART BAYLEY said :—"The question of improvements is one which is really as regards occupancy-raiyats more of theoretical than practical

[*Sir S. Bayley ; Mr. Hunter ; Sir S. Bayley ; Mr. Hunter ;* [9TH MARCH,
Sir S. Bayley ; Babu P. M. Mukerji.]

value. As long as the occupancy-raiyat is not ejected for arrears of rent, compensation for improvements will not have to be paid, and so long the landlord will not trouble himself very much as to whether the raiyat makes improvements or not. But it is of the first importance that we should encourage and strengthen the desire to make improvements. We are often told that raiyats do not make improvements ; but in my experience I have found that when improvements are made they are, especially in the case of wells, made by the raiyats ; only where the *bhaoli* system prevails it is done under the direction of the landlord. The theory which underlies the whole arrangement is that the landlord has the right to receive the rents ; the raiyat has the right to use the land ; it is more to his interest that the land should be improved, and therefore he should have the prior right to make improvements. I hope the Council will not accept the amendment."

The amendment was put and negatived.

The Hon'ble MR. HUNTER moved, on behalf of the Hon'ble Mr. Amír Ali, that in section 85, sub-section (1), the words " otherwise than by a registered instrument " be omitted.

The Hon'ble SIR STEUART BAYLEY said :—" As this amendment has not received any support, I see no need to say anything."

The amendment was put and negatived.

The Hon'ble MR. HUNTER, on behalf of the Hon'ble Mr. Amir Ali, moved that in section 85, for sub-section (2), the following be substituted :—

" No sub-lease shall be valid for more than nine years."

The Hon'ble SIR STEUART BAYLEY said :—" In consequence of the last amendment this section is not required."

The amendment was put and negatived.

The Hon'ble BABU PEARI MOHAN MUKERJI moved that in sub-sections (2) and (3) of section 85, for the word " nine " the word " five " be substituted. He said :—" We are all alive to the evils of sub-letting. Both the Government of India and the Secretary of State have strongly condemned the institution and urged the necessity of discouraging it. Mons. Laveley has told us that it was to his Lordship the President of this Council more than to any other statesman

1885.] [*Babu P. M. Mukerji ; Mr. Reynolds ; Mr. Gibbon ; Sir S. Bayley.*]

that the exposure of the evils of the institution as it obtains in Ireland is due. Its effect on the condition of the tenants has been the same here as in Ireland. A Flemish peasant is regarded by statesmen and legislators as a model peasant, but before we can hope to see a peasant like him in this country it is necessary to educate the Bengal raiyat to regard with horror the idea of allowing a stranger to settle on his land and farming a portion of it. The Flemish peasant would regard it as altogether monstrous. It is with a view to minimise the evil in this country that I move that the maximum period for which a sub-lease shall hold good should not exceed five years. The Bill makes it nine years, and in so far therefore gives a sub-lessee larger rights than what a non-occupancy-raiyat would get under his judicial lease."

The Hon'ble MR. REYNOLDS said :— " I regret I cannot see my way to support this amendment, because, while I sympathise with the hon'ble member in the desirability of discouraging sub-letting, I am not satisfied that we should effect this object by shortening the term of the engagement. But I hope the improved position of a sub-lessee under the Bill will tend to discourage sub-letting. I may say that this particular term of nine years is the result of a compromise which was the outcome of a long discussion. I therefore think it will be better that the Council should not disturb the agreement to which the Committee came in fixing the term at nine years."

The Hon'ble MR. GIBBON said :— " I would oppose the amendment. If it is carried it will do much not to restrict sub-letting but to encourage it. I quite agree that the more you wish to restrict sub-letting the stronger you must make the position of the sub-lessee. The sub-lessee has no status under the present law ; the occupancy-raiyat who now sub-lets has it in his power to defraud his sub-tenant at pleasure, and it is mainly owing to the occupancy-tenant having this power that the admitted evils of the present *partaoli* system are due. Now that it has been thought necessary to withhold the right to transfer from the raiyat, it is only by sub-letting a portion of his holding that the raiyat will be able to raise money for his requirements ; and for this purpose I maintain it is necessary to give him a longer term than nine years, and I would extend it to fifteen years. The more you shorten the period for which sub-letting is to be legalized, the greater the load of debt the raiyat must clear off in a year or the greater the burden of debt will remain on the head of the raiyat at the end of the lease."

The Hon'ble SIR STEUART BAYLEY said :— " It was on consideration for convenience that we came to the particular term of nine years. It was seven

[*Sir S. Bayley ; Mr. Hunter ; Babu P. M. Mukerji.*

[9TH MARCH,

years previously in the Bill. An amendment was proposed to increase it to fifteen years, but after considerable discussion the term of nine years was fixed. If you restrict the period, sub-leases will be given under another name. I do not think a sufficiently strong reason has been shown to disturb the conclusion to which the Select Committee came."

The amendment was put and negatived.

The Hon'ble MR. HUNTER, on behalf of the Hon'ble Mr. Amir Ali, by leave withdrew the amendment that in section 85, sub-section (3), the words "by an instrument registered" be omitted.

The Hon'ble BABU PEARI MOHAN MUKERJI moved that section 86, sub-section (3), be omitted. He said :—" This sub-section creates for the first time a rule of presumption which, I think, is not altogether warranted. The rule of presumption is this, that if a raiyat takes a new holding in the same village from the same landlord during the agricultural year next following the surrender, or if the raiyat ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate, it shall be presumed, until the contrary is shown, that he has given notice to the landlord for the surrender of his holding. At present the Courts reasonably raise a presumption where it is proved that the land surrendered is let to another raiyat from the beginning of the year; but except that one fact no other fact can raise a presumption like this. It is no ground for a reasonable presumption that a man has taken another holding in the village, because he may wish to have two or three holdings in the same village. That should create no presumption that he has surrendered the previous holding, nor is it a presumption that because he has not resided in the village for three months he has surrendered his holding. Your Lordship will see on turning to section 87 that no presumption of a raiyat having abandoned his holding will be raised until after the expiration of the year in which the raiyat actually abandoned it. But here, when the question is as to whether the raiyat will continue liable for the payment of rent, the Bill contemplates raising the presumption in his favour that he has surrendered simply by the fact of his not living in the village for three months. The two things are incompatible with one another, and the presumption is contrary to actual fact that a man may have several holdings in a village without raising the presumption that he has surrendered any of the holdings he previously held. On these grounds I move that the unnecessary rule of presumption which this section tries to create should be omitted."

1885.]

[*Sir S. Bayley ; Mr. Gibbon.*]

The Hon'ble SIR STEUART BAYLEY said :—“ If I understand the hon'ble member correctly, he has entirely misunderstood the meaning of the section. This section has nothing to do with surrender ; it does not come into effect until the surrender has taken place. The question is, when the raiyat has surrendered, is he still to be held liable for the payment of the next year's rent ? If he has given three months' notice the answer is no, if he has not given it the answer is yes, but we look to the object with which three months' notice is required, and we say if he has left the village, or if he has exchanged his holding for another, then the landlord has already received the information which the notice is intended to secure, and it is here that the presumption comes in. The presumption is not a presumption of surrender, but of service of notice. The raiyat will then be able to say that he gave notice, because the landlord has let him another piece of land in the same village. If this was a presumption of surrender, then there would be some force in the remarks of the hon'ble member ; but the question of surrender itself has nothing to do with this section. It is merely a question whether proper notice has been given to the landlord.”

The amendment was put and negatived.

The Hon'ble MR. GIBBON moved that section 90, sub-section (2), be omitted. He said :—“ This section prohibits the landlord from measuring land more than once in every ten years without the previous consent of the Collector. Where boundary-marks are well defined and the circumstances of the holdings remain fixed from year to year, the landlord will not suffer to any very great extent ; a measurement once correctly made will hold good for many years ; but in sparsely cultivated districts, such as in North Behar, where raiyats take possession of land without the previous written consent of the landlords, where custom permits the raiyat to take possession of waste land and cultivate it for himself without acquiring the consent of his landlord, the effect will be disastrous. Fallow lands conterminous with the raiyats' lands are encroached upon without the raiyats obtaining the consent of the landlord. Raiyats who wish to protect their lands with an embankment and ditch will, as a rule, erect both embankment and ditch on lands that do not belong to them, and the only means the landlord has of checking trespass is by measurement. The Bill gives the Collector the power to permit measurement whenever he deems fit, but the only reason the landlord could adduce for wishing to measure would be trespass, and the practical effect of this prohibition will be that every case of real trespass which the landlord brings against his raiyat will be construed into an attempt to evade the prohibition, and every request for

[*Mr. Gibbon ; Rao Saheb V. N. Mandlik ; Mr. Reynolds ;* [9TH MARCH,
Mr. Gibbon ; Babu P. M. Mukerji.]

permission to measure to test trespass will be refused. If any injury will be done to the raiyat by permitting his landlord to measure his land oftener than once in ten years, the injury will be not be done by the act of measurement but by the use he makes of such measurement in the Courts afterwards."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK supported the amendment.

The Hon'ble MR. REYNOLDS said :—" I cannot support the amendment, although there may be cases in which the country is only partially cultivated and thinly populated, and in which this sub-section might in some degree prejudice the interests of the landlord ; but I cannot in the least agree that the omission of the sub-section will not do the raiyats any injury. The great object of the sub-section is not so much to prevent the landlord from measuring as to prevent harassment to the tenant by continual threats of measuring the land ; because there is nothing the raiyat objects to so much as having his land measured, and it is one of the most powerful engines of making the raiyat come to terms. It is to take away the landlord's power in this respect that this sub-section was inserted. The abuse of the provision is sufficiently provided for by clauses (a) to (c), which provide for cases in which the landlord might reasonably be allowed to measure oftener than once in ten years. But as a general rule the period which should be allowed to elapse should be ten years ; the omission of the sub-section will put the rights of the raiyats in great danger by the landlord constantly threatening to measure lands."

The Hon'ble MR. GIBBON said :—" If it is from the fear of threats of measurement that the injury to be done to the raiyat is anticipated, then the section should have been confined to measurement through the Court, and not to the voluntary measurement of land."

The amendment was put and negatived.

The Hon'ble BABU PEARI MOHAN MUKERJI moved that section 38 of Act VIII of 1869 (B. C.) be added as sub-section (3) of section 91. He said :—" The Bill maintains the right of landholders to measure the lands comprised in their estates, and this section provides for cases in which tenants refuse to attend the measurement and point out the boundaries of their lands. But there is another class of cases in which landholders, and specially those who have come to the possession of estates by purchase at auction-sales, require the assistance of Courts in a much

1885.]

[*Babu P. M. Mukerji ; Mr. Reynolds.*]

greater degree than in the other. It is where a landholder is unable to ascertain, by reason of a combination among his raiyats, the names of raiyats who hold particular plots of land in his estate. There is no provision in this section which meets such cases. It is true the landholder may proceed under the record-of-rights chapter, but the procedure which it involves is dilatory and very expensive, and it would throw the local community into a ferment by requiring the landlord to apply for a record of the rights and status of every raiyat in the estate. If a landlord is enabled to ascertain with the assistance of the Court the names of the raiyats on his estate and the areas of the land they hold, the parties will in most cases amicably settle other questions affecting them. Section 38 of the present law gives a simple remedy; and I therefore move that it be added as a sub-section to this section. It runs as follows:—

‘ If the proprietor of an estate or tenure, or other person entitled to receive the rents of an estate or tenure, is unable to measure the lands comprised in such estate or tenure, or any part thereof, by reason that he cannot ascertain who are the persons liable to pay rent in respect of the lands, or any part of the lands comprised therein, such proprietor or other person may apply to the Court which would have had jurisdiction in case a suit had been brought for the recovery of such lands; and such Court thereupon, and on the necessary costs being deposited therein, by the applicant, shall order such lands to be measured, and shall cause a copy of such order to be transmitted to the Collector in whose jurisdiction the lands are situate, together with the sum so deposited for costs; and the Collector shall thereupon proceed to measure such lands, and shall ascertain and record the names of the persons in occupation of the same, or, on the special application of the proprietor or other person aforesaid, but not otherwise, shall proceed to ascertain, determine and record the tenures and under-tenures, the rates of rent payable in respect of such lands, and the persons by whom respectively the rents are payable. If after due enquiry the Collector shall be unable to cause such lands to be measured, or to ascertain or record the names of the persons in occupation of the same, or if he shall (in any case in which such special application shall have been made as aforesaid) be unable to ascertain who are the persons having tenures or under-tenures in such lands, or any part thereof, then and in any such case Collector may declare the same to have lapsed to the party on whose application such enquiry may have been made. If any person, within fifteen days after such Collector shall have recorded the name of such person as being in occupation of such land, or any part thereof, or shall have declared a tenure to have lapsed, shall appear and show good and sufficient cause for his previous non-appearance, and satisfy such Collector that there has been a failure of justice, such Collector may, upon such terms or conditions as may seem fit, alter or rescind such order according to the justice of the case.’

The Hon'ble MR. REYNOLDS said:—“ I think now that we have heard the section read, the Council is in a position to judge how far it answers the descrip-

[*Mr. Reynolds ; Mr. Gibbon ; Sir S. Bayley ;* [9TH MARCH,
Babu P. M. Mukerji.]

tion of its being a short and simple procedure. The reasons why the Select Committee have not put into this section any provision corresponding to section 38 were given sufficiently by the hon'ble member in charge of the Bill in his opening speech. When the landlord wishes to measure, he can apply to do so ; but where he is in such a position as the hon'ble mover of the amendment has mentioned, when he is a recent auction-purchaser, and does not know who the tenants are, it is intended that he should apply for the preparation of a record-of-rights. The hon'ble member says other questions may arise as to the status of the tenant and his rights in the land, but the landlord will surely wish to know all these particulars, and it is desirable that he should know them."

The Hon'ble MR. GIBBON said :—" I support the amendment, but at the same time I think it will be better effected under section 158. A few words added to that section will effect all my hon'ble friend requires, and I would rather see an alteration made there than have all the elaborate procedure of section 38 added to the Bill."

The Hon'ble SIR STEUART BAYLEY said :—" I have no objection to the amendment of section 158 in the way proposed by Mr. Gibbon, but I am not sure that that will satisfy the hon'ble mover of the amendment now before the Council. But the hon'ble member greatly facilitates my reply when he says that the procedure of section 38 of Act VIII of 1869 is simple in comparison to a record-of-rights, and that it is not essential for the landlord to have all that information. But the hon'ble member has not read section 39 of that Act, which raises precisely the same difficulty as in the other case, namely, the double procedure of the Court and the Collector instead of the Collector only. I think that the provisions of section 158 of the Bill are ample to secure for the landlord all the information which the hon'ble member requires."

The Hon'ble BABU PEARI MOHAN MUKERJI said :—" The law contained in section 38 of Act VIII of 1869 has been in operation for twenty years ; still there has not been a single complaint of its harsh operation. But I shall be perfectly satisfied on behalf of landlords if some modification be made in section 158 which will give the landlord the right of applying for the purpose of determining who is the tenant of a particular plot of land ; as it stands the section does not provide for that, and there is no provision in the Bill which will give the landlord the right to make such an application without subjecting him to all the litigation, expense and trouble of a record-of-rights."

The amendment was put and negatived.

1885.]

[Babu P. M. Mukerji ; Sir S. Bayley.]

The Hon'ble BABU PEARI MOHAN MUKERJI moved that sections 93 to 100 be omitted. He said :—“ Although a provision for the appointment of managers of joint estates was in the Statute-book up to 1874, it remained a dead-letter, and it was repealed in that year along with other obsolete enactments. No case has been made out for a revival of the provision. The facilities which judge-made law has given for the apportionment of rents payable by raiyats in joint estates at the instance of any co-owner, however small might be his share in the joint estate, render such a provision wholly unnecessary. It is besides, in the interests of the co-owners themselves and of their raiyats that every encouragement should be given to a partition of estates and tenures among the co-parceners, and the tendency of recent legislation has also been in that direction. The provisions contained in these sections would conflict with the wisdom of such a policy, and would therefore be a retrograde move.”

The Hon'ble SIR STEUART BAYLEY said :—“ I am afraid I cannot quite accept in the name of the Select Committee the particular statement of the law laid down by the hon'ble member, nor his recommendation that these sections be omitted. At the risk of detaining the Council I will read what the Rent Commission reported as to the state of facts necessitating the introduction of these sections, and as to the state of the law at present. The fact of the statement being made on the authority of Mr. Field is, I think, a sufficient proof of the present law. The Commission said :—

‘ A serious source of difficulty in the relations between landlords and tenants arises out of the system of co-parcenary which is customary amongst Hindus, and is not uncommonly imitated by Muhammadans. When co-parceners or co-sharers, as they are commonly called, stand in the position of landlords, and manage their affairs either through a single member of the family (*karia*) or through a manager appointed by, and acting for, all, there is no difficulty, and the tenants are put to no greater inconvenience than the tenants of other landlords. But when, on the contrary, the co-sharers are disunited and dissension prevails amongst them, their tenants are exposed to considerable harassment. The rent is payable to the co-sharers jointly, and properly upon their joint receipt; but each attempts to collect separately the share to which he conceives himself entitled; and the tenant who would comply with all their demands would find that he had to pay a considerable amount more than his actual rent. Then the servants and adherents of each co-sharer seek their own perquisites, and, in order to obtain these, delude the ignorant raiyats, who are thus induced to pay more rent to one co-sharer than he is entitled to receive; or, for the purpose of manufacturing evidence, receipts are given for a larger share, while in fact less sums were paid than appear in these fraudulent documents. Each co-sharer attempts to enhance the rents of his share, although no partition has been made; or each seeks to make a measurement, and rival *amins* prepare *chittahs*, the entries in which are regulated by the grati-

[Sir S. Bayley ; Babu P. M. Mukerji.]

[9TH MARCH,

fications which the raiyats are able or willing to give them. Litigation ensues, and the tenants side with this co-sharer or that ; they give evidence and earn brief gratitude from one party, undying hatred from the other. A riot takes place between the adherents of the opposite parties, and the police appear on the spot to reap a rich harvest. The raiyats are impoverished, cultivation thrown back, and distrust and dissension pervade the village. Such is a picture, by no means overdrawn, of the pernicious results of want of union amongst a brotherhood of landlords.

‘ The necessity of a remedy for this state of things was felt at an early period of British administration, and in 1812 it was enacted that, inasmuch as inconvenience to the public and injury to private rights had been experienced in certain cases from disputes subsisting among the proprietors of joint undivided estates, whenever sufficient cause shall be shown by the revenue-authorities or by any of the individuals holding an interest in such estates for the interposition of the Courts of judicature, it shall be competent to the Zila judges to appoint a person duly qualified and under proper security to manage the estate ; that is, to collect the rents and discharge the public revenue, and provide for the cultivation and future improvement of the estate (Regulation V of 1812, section 26). The Judge was also competent, upon the representation of the Revenue-authorities, or of any such person as aforesaid, to remove any manager so appointed (*id.*, section 27). A subsequent Regulation (V of 1827) enacted that when the Zila Court thought it just and proper under the provision of that Regulation to provide for the administration or management of landed property, it should issue a precept to the Collector directing him to hold the estate in attachment and appoint a person for the due care and management thereof, under good and adequate security for the faithful discharge of the trust in a sum proportionate to the extent thereof. The reference in Regulation V of 1827 to Regulation V of 1812 was repealed by Act XVI of 1874, so that it is not now competent to a District Judge to send a precept to the Collector directing him to provide for the management of an estate belonging to a joint undivided family. The fragment of Regulation V of 1812 which is still in force is incomplete, and in consequence almost inoperative.

‘ Such being the present state of the law, a majority of us have thought that this fragment might well be repealed and a complete set of effective provisions substituted therefor.’

“ That is the opinion of the Rent Commission, and it was accepted in the first draft Bill, and with certain slight alterations has been retained in the various subsequent editions of the Bill. In regard to the details no amendment is proposed or objection made, and I must oppose the amendment.”

The Hon'ble BABU PEARI MOHAN MUKERJI said :—“ I should have liked the hon'ble the Law Member to have given his opinion on the state of the law at present, but I submit that the repeal of a repealing Act can never revive the Act which had been repealed. I think that is the principle of construction of enactments, and in that view there is no law since 1874 for the appointment of managers of joint estates in this country.”

1885.] [Mr. Ilbert; Babu P. M. Mukerji; Mr. Evans; Mr. Reynolds.]

The Hon'ble MR. ILBERT begged to explain that the Hon'ble PEARI MOHAN MUKERJI was under a misapprehension in supposing that section 26 of Regulation V of 1812 had been repealed. That section was printed as existing law in Mr. Whitley Stokes' edition of the Lower Provinces Code, which was published in 1878 (Vol. I, p. 111); and, without going into technical considerations, he would merely say that in his opinion it was rightly so printed. The hon'ble member had probably misconceived the extent of the repeal clause in Part VI of the schedule to Act XVI of 1874.

The amendment was put and negatived.

The Hon'ble BABU PEARI MOHAN MUKERJI moved that sections 101 to 115 be omitted. He said :—“ When giving his sanction to the provisions regarding record-of-rights, Her Majesty's Secretary of State expressed his apprehension that the difficulties of carrying out the measure may prove greater than the Government of India anticipated. But the practical difficulties of the measure are not the most prominent among its objectionable features. It would cause irritation among landlords and raiyats, and convulse rural society to an extent of which those who are not thoroughly acquainted with the details of our agrarian economy can have little idea. Landholders and raiyats alike have repeatedly prayed the legislature to expunge these provisions from the Bill, as they would do good to neither. They involve an amount of expense and irritating enquiry which will be far from compensated by the result, and it is on this account that to no part of the Bill have the raiyats from different parts of the country offered more opposition than to this.”

The Hon'ble MR. EVANS said :—“ I do not agree with the hon'ble member. There is no doubt that when a record-of-rights is sought to be made over a particular area there will be a considerable amount of contest at the time. But when it has been made, every landlord and every tenant will really be better off and these records will give facilities in dealing with cases. If such a thing as a cadastral survey and record-of-rights is carried out over the whole of Bengal, it will remove a large source of litigation and uncertainty. Much must be left to the discretion of the Local Government as regards when and where and to what extent the survey and record is to be made. I stated my opinion on this matter when this Bill was referred to the Select Committee. I quite understand that friction must be produced to obtain it, but the ultimate benefit will be so great as to counter-balance the friction.”

The Hon'ble MR. REYNOLDS said :—“ I think the hon'ble member has overlooked the fact that this chapter, which he desires to omit, will apply to Government

[*Mr. Reynolds ; Mr. Gibbon ; The Lieutenant-Governor.*] [9TH MARCH,

settlements. The settlement procedure law is at present contained in Bengal Act VIII of 1879, which this Bill proposes to repeal, and I do not observe that the hon'ble member has any motion for the omission of that Act from the schedule of Acts to be repealed. The result of this amendment would, therefore, be to leave the Government no means of conducting a settlement of revenue in Government estates except the old Regulation of 1822. I do not think he contemplated any such result."

The Hon'ble MR. GIBBON said:—"I oppose the amendment. I think the chapter as now drafted in the Bill will be more beneficial to landlords than to tenants. In fact, speaking personally as a landholder, I look forward to the operation of this chapter to undo much of the harm which will be done to the landlord's interests under section 18. When it was first proposed and as it stood in Bill No. II, I objected to this chapter, but the Select Committee has removed every objection I had to it, and I look forward to the beneficial effects of this chapter both in the interests of the landlord as well as in those of the raiyat."

His Honour THE LIEUTENANT-GOVERNOR said:—"I am glad to find from quarters so different a concurrence of opinion in favour of this chapter as one of great importance and necessity. For myself I would sooner omit very many other portions of the Bill than this one. It provides for the first serious attempt to secure that which is absolutely required, by means of a careful record-of-rights not only for the better administration of the country, but for a better understanding between landlords and tenants of their respective positions. Until such a record has been made, we shall have made no progress in the settlement of disputes arising between landlords and tenants. The difficulties to which the hon'ble member refers are difficulties which I am sure we can get over. For if such difficulties have been overcome in a province like the Punjab, we need fear no serious difficulty in a province like Bengal. We are not intending to press on this process with anything like undue haste or to force it on with undue precipitation. With the sanction of the Secretary of State and of the Government of India the utmost we should attempt in the first instance would be one single district, and we shall be guided much by the success we meet with in that district before proceeding further. I am sure I speak the conviction of the Hon'ble Rao Saheb Mandlik and of every person who comes from that part of India which he represents when I say that where a record-of-rights prevails it has been found to be good and beneficial for all sections of the landholding community."

1885.]

[*Rao Saheb V. N. Mandlik ; Sir S. Bayley.*]

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK reserved his observations until the subsequent amendment in his name came on.

The Hon'ble SIR STEUART BAYLEY said :—“ I can hardly be expected to accept a proposal for the omission of this chapter, in the settlement of which the Select Committee has taken an immense deal of pains, and which I think has been reduced to a shape in which it may be worked beneficially and without serious risk of danger to any one. The chapter covers very large ground and can be applied to various cases, individual and general ; it may be applied to a tenure or part of a tenure or to a whole district. But I think there has been some misapprehension in the mind of the hon'ble mover of the amendment as to the Secretary of State's opinion, and I may be allowed to quote his words. He says :—

‘ While fully admitting the advantages which would attend the establishment of village records and accounts, the formation of a record-of-rights, and the introduction of a field survey, I cannot avoid the apprehension that the difficulties of carrying out these measures in those parts of Bengal in which village accounts and accountants, if they ever existed, have long ago entirely disappeared, even from tradition and remembrance, may prove greater than you anticipate. Your present proposal, however, merely contemplates an experimental commencement of the work in the Patna Division of the Province of Behar, where the need for it is, you think, most pressing, and the conditions least unfavourable, and to this I will make no objection.’

“ You have heard just now from His Honour the Lieutenant-Governor that this order of the Secretary of State is still in full force, and that at present he has no intention of going beyond it. Certain provisions of this chapter are of course applicable everywhere. A landlord in Bengal proper may apply to have these settlement-operations brought into effect in regard to his estate or a portion of his estate ; or on a riot taking place in any single landlord's estate, the Local Government may apply to the Government of India for permission to put it in force in that estate. But with regard to a general record-of-rights, not only is it distinctly understood that the Lieutenant-Governor will apply it only in some one selected district in Behar and abide by the results of that experiment, but it is also certain that, as the Secretary of State has not sanctioned anything beyond that, nothing beyond it will be carried out until the Secretary of State does sanction it. The result I am unwilling to prophesy, but I do say that, as in the neighbouring district of Benares, the operation has been most successfully carried out without much friction and has been the salvation of the tenant, a similar operation may be conducted in the province of Behar, which is in almost all respects similar to the districts bordering it in the North-Western Provinces. I do not see why what has been worked so successfully in the North-Western Provinces

[*Sir S. Bayley; The President; Rao Saheb V. N. Mandlik.*] [9TH MARCH,

should be inapplicable to Behar. There is one portion of the chapter to which further allusion will be made when the Hon'ble Rao Saheb Mandlik makes his proposal. I will only say that we look on the provision to which the hon'ble member's amendment refers (section 112) as particularly necessary to be kept in the Bill, but we hope sincerely never to have occasion to use it. It is a very strong power kept in the background to be used when the operation of the ordinary law is not found sufficient. With these remarks I oppose the motion."

His Excellency THE PRESIDENT observed that he had been very much struck by the almost complete unanimity of opinion which prevailed in the Council as to the utility of this chapter. At the same time he was perfectly able to comprehend the natural anxiety which its unreserved application over very extensive areas would occasion both to the raiyats and zamindars. Regarding the question in the abstract, it was perfectly obvious that one of the first steps towards the cessation of litigation and ill-feeling between two antagonistic interests, was that they should each know exactly what belong to them; therefore no one, His Excellency imagined, not even the hon'ble member himself, could in theory be opposed to the introduction of this chapter. At the same time His Excellency could assure the hon'ble member that not only in deference to the suggestions made to them by the Secretary of State, but also from their own appreciation of the exigencies of the case, the Government of India would be indisposed to consent to the application of the sections referred to otherwise than in the sense and spirit recommended by Lord Kimberley. By applying the machinery of the chapter to a special and limited area in a tentative method they would be able to observe how the clauses were likely to work, and there was every hope that by that cautious method of procedure they would be able to obviate those objections to which the hon'ble member had referred.

The amendment was put and negatived.

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK moved that to section 112 the following be added :—

"Where the Local Government takes any action under this section, the settlement-record prepared by the Revenue-officer shall not take effect until it has been finally confirmed by the Governor General in Council."

He said :—“This chapter has been admitted by the hon'ble member in charge of the Bill to be exceptional, and I do hope with him that the occasions on which it will be necessary to invoke its aid may not be so frequent as His Honour the

1885.]

[*Rao Saheb V. N. Mandlik ; Mr. Reynolds.*]

Lieu tenant-Governor thinks they might be. No doubt cases will arise in which it will be necessary to impose the strong arm of the executive power to bring contending parties to submit to rents by settlement. And, therefore, as in some portions of this chapter, leave is given to settle rents and to reduce rents and to do what in the opinion of the Revenue-officers entrusted with carrying out the operations of this chapter (the effect of which will be to suspend at least for the time the operation of the general law) may be necessary to be done with regard to private property. I think, however, that it is so necessary for the satisfaction of both landlords and tenants that an opportunity should be given for appealing to the Government of India before the record becomes final, that I feel it essential in the interests of the public that a proviso, such as that which I now propose, should be enacted. I distrust nobody, and no doubt Your Lordship is impressed by the fact that these sections of the Bill are necessary to good government ; but to me they throw a new light on the state of affairs in this province, and it is only as such that I can view them. But I think it is essential when the ordinary law is suspended that the Government of India should be a referee in the last resort for the purpose of confirming that record when it has been prepared. I move this amendment in the interests of the public, and it will in my view give more assurance to all parties concerned. A reference has been made to me with reference to the Bombay Presidency, and I can say at once that there is no such record-of-rights there. I do not wish to go into the general question, which is a very large one, and under the circumstances disclosed in paragraph 42 of the Select Committee's Report, I do not wish to raise any question about it. I think that when the Government of India determines that sufficient reasons exist to introduce this chapter, they should be entrusted with the duty of seeing that the record should be so prepared that it may be adopted as the future record-of-rights."

The Hon'ble Mr. REYNOLDS said :—" I cannot agree with the hon'ble member that the procedure under section 112 will really be a procedure of the executive authorities, though it will be initiated by the Executive Government. I think the hon'ble member has overlooked the fact that proceedings under this section will be conducted under the usual procedure laid down in this chapter ; consequently the decisions of the Revenue-officers will be appealable to the Judge and to the High Court. I confess it appears to me somewhat unnecessary, when such proceedings have received the sanction of what is practically the highest judicial authority, to say that they shall not take effect until finally approved by the Government of India. I presume the hon'ble member thinks that they ought to have the confirmation of the highest executive authority. But it seems to me that,

[*Mr. Reynolds ; The Lieutenant-Governor ; Sir S. Bayley ;* 9TH MARCH,
Mr. Gibbon.]

as the procedure will not be of an executive but of a judicial character, there is no necessity for the confirmation of the Governor General in Council to give validity to it."

HIS HONOUR THE LIEUTENANT-GOVERNOR said:—"As the section to which the amendment refers is a special procedure to be resorted to in special cases, I should not have thought there was any necessity for a reference to the Governor General in Council before the Lieutenant-Governor can bring it into operation. I believe a great deal of the procedure contained in this section is derived from the Agrarian Disturbances Act, and it is with the view of suppressing threatened disturbances rather than actual disturbances at great emergencies between landlords and tenants that summary provisions like these have been proposed with a view to give the Local Government power to prevent those disturbances. As the Bill stands, the sanction of the Government of India is required before the Lieutenant-Governor can take any steps in the matter. If that precaution is not sufficient, but it is considered advisable that the final record should not become valid before it receives the sanction of the Governor General in Council, I shall not oppose the amendment."

THE HON'BLE SIR STEUART BAYLEY said:—"I look upon this subject from the same point of view as His Honour the Lieutenant-Governor. I think this is a special procedure, only to be used under exceptional circumstances, although the rights which will thereby be settled will be settled judicially by the Settlement-officers, who work under the safeguard of an appeal first to the Special Judge, and afterwards to the High Court. Still as the power of reducing rents is given by this section, and not elsewhere, I quite agree that it might be considered an additional safeguard if the settlement requires the confirmation of the Governor General in Council. In that view I accept the amendment."

The amendment was put and agreed to.

THE HON'BLE MR. GIBBON moved that in section 120, sub-section (1), clause (a) after the word "before," the words "or after" be inserted. He said:—"I believe I am right in saying that this is the only attempt ever made under any law to define what are proprietors' private lands. The present law on the subject is contained in section 6 of Act VIII of 1869 (B.C.), which simply says that occupancy-rights shall not be acquired by raiyats holding lands held by landlords as zirat. No attempt has ever hitherto been made to define what zirat lands are.

1885.]

[*Mr. Gibbon ; Mr. Evans ; Rao Saheb V. N. Mandlik.*]

The intention is to continue those lands as zirat which are actually existing as such, and the object is to enable the landlord to avoid the accrual of occupancy-rights in them. Although it may be easy for a landlord now to prove that he has held lands as zirat for 12 years, this Bill is not likely to be amended for some time to come, and some years hence it will be impossible for a landlord to prove what lands he held as zirat 12 years before the introduction of this Act and what he acquired afterwards. We allow a settled raiyat to sub-let for one year land occupied by him, but a sub-lessee does not acquire any rights in land so leased to him. If a landlord has held zirat land for 12 years, we should assume that he wishes to cultivate it himself. At the same time he may wish to sub-let it for some reason or other for a year or two, but under this Bill if he does so his right to recover possession will be forfeited. I think that it will be very hard on the landlord. I think that 12 years' continuous cultivation should give the landlord a right to protect his interest when he sub-lets the land for a temporary purpose only, and I think we should under this Bill provide the means to enable him to do so, and for this purpose I would move that the words 'or after' be inserted."

The Hon'ble MR. EVANS said:—"I agree with the hon'ble member. I think the desire of landlords to cultivate by their own servants or by hired labour should not be discouraged. There are only a few classes of landlords who cultivate their own lands, and it is very natural and proper that they should have the power to do so considering the valuable crops which are so cultivated. Unless, therefore, there is some policy underlying this section adverse to the holding of lands for the cultivation of valuable crops, such as tea, indigo and opium, in case the opium monopoly is given up, there appears to me to be no reason why it should not be considered that, when a landholder cultivates lands for 12 years, he intends to hold those lands in his own cultivation, nor is there any reason why he should not be allowed to let it for a year or two for purposes of the rotation of crops and the like."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDALIK said:—"I shall vote for the amendment. I have gone through the whole chapter relating to waste lands, and there appears to me to be no reason for prohibiting a man who is a large proprietor of waste lands from reserving to himself certain lands for his home farm. But by this section, directly he lets in a cultivator, he loses the land. The certain effect of this provision, I think, will be that he will let in no cultivator, and unless an increase of hired labourers is in view, the object of the Act will be defeated by these very restrictions."

The Hon'ble Mr. REYNOLDS said :—“ The amendment would have the effect of defeating the object which the Government of Bengal has in view. There are now, and always have been, two great classes of lands—raiyati lands in which the right of occupancy accrues, and khamar lands in which such rights cannot accrue ; and it is the object of this section, and has always been the object of the Government of Bengal, that the stock of khamar lands should not be increased to the diminution of the area of raiyati lands. There is undoubtedly evidence before the Government of Bengal and in the papers before the Council to show that there has been great misappropriation of lands as khamar lands on the part of landlords in Behar, and especially on the part of planters. The hon'ble member urged that it would be impossible for landlords to show that they had cultivated particular lands for 12 years. If a landlord is put into difficulty in that respect, he can proceed under section 118. He is at liberty to apply to have his khamar lands demarcated and recorded, and if he does so there cannot be any chance of his being deprived of those lands afterwards ; but it is certainly the intention that khamar lands should not be added to in future. There is a system in Behar under which landlords record as khamar lands which are taken in exchange from raiyats, and the lands received in return by raiyats are also placed under the same heading ; so that the result has been to turn raiyati lands into khamar lands. I do not say more than what I see has been said in Mr. Edgar's note on rent questions in Behar. The result of saying ' before or after ' will be to allow landlords at any time to take up lands, to cultivate them for 12 years, and thus to prevent occupancy-rights from accruing. It is certainly not the intention of the present law that landlords should have this power. The proprietor has the power to keep newly-cultivated lands to himself if he pleases, but I am not aware of any rule to prevent the accrual of occupancy-rights if he lets those lands. If a proprietor takes waste under cultivation after the record contemplated in this chapter has been made, he will have power to keep it under his own cultivation. This question will shortly be raised on the motion of my hon'ble friend Mr. Hunter, and I think that amendment will *bonâ fide* raise the question of waste lands. The effect will not be permanently to bar the acquisition of occupancy-rights, but it will be sufficient to enable the landlord to cover any expenditure incurred by him. But the effect of the present amendment will be to prevent the acquisition of occupancy-rights for ever in lands which come into the temporary possession of the zamindar. The section as it stands will give the landlord probably more than he is entitled to have : if he has cultivated for 12 years, the Revenue-officer will not look further ; he will have to record the lands as private lands. In the same way he will be bound to record all cultivated land which is recognised as khamar. Under these rules I

1885.] [*Mr. Reynolds ; Mr. Hunter ; The Lieutenant-Governor ; Sir S. Bayley.*]

cannot think that the section is in any way unfair to the landlord, and I think any extension of them which would allow him, by taking possession and holding lands after the passing of the Act, to increase the stock of khamar lands, will not be in accordance with what is intended by this chapter, and it will not provide a remedy for an acknowledged evil in Behar."

The Hon'ble MR. HUNTER said :—" I support this amendment. The hon'ble the Law Member told the Council in eloquent words the other day that the man who cultivates for a profit is now coming face to face with the man who cultivates for a subsistence. The Bill makes many and valuable provisions for the man who cultivates for a subsistence, and I think the hon'ble gentleman who brought forward this motion might fairly ask the Council to accept his amendment in favour of the man who cultivates for a profit. The last speaker has dwelt on the dangers of the landholders encroaching upon large areas as private lands. I admit that such dangers existed in times past, but I think they are sufficiently provided for by the khamar and contract clauses in the Bill. I therefore think it would be sound policy to accept the amendment proposed by my hon'ble friend."

His Honour THE LIEUTENANT-GOVERNOR said :—" I have only a few words to say in addition to what has fallen from my hon'ble friend Mr. Reynolds. When the Bill was originally drawn it contained a provision which required the Local Government to order a measurement and separation of private lands of proprietors in each village from raiyati lands in the possession of cultivators. That was modified as the discussions went on by making that provision permissive instead of imperative, and it did not include the words ' or after ' which the hon'ble member very ingeniously wishes to introduce now. The object of not inserting those words was to give protection to raiyati lands against any future encroachment on the part of the zamindar. Lands which for twelve years before the passing of this Act are shown as domain land will be protected. But if you give power at any time after the passing of the Act to carry on that process to any extent to which the landlord may be willing, lands which are now raiyati may be converted into domain or private lands. That was thought undesirable. The zamindar will at all times have the right to cultivate as much land as may be surrendered to him by hired labour, the only condition being that, if he lets it out to tenants, they will have the chance of growing up into raiyats with rights of occupancy. I think on the whole the advantage is on the side of retaining the section as it stands."

The Hon'ble SIR STEUART BAYLEY said :—" This section is one which has

[*Sir S. Bayley.*]

[9TH MARCH,

troubled my mind a good deal. I am very anxious to meet the wishes of my hon'ble friend, but, as it stands, I see great objection to accepting this amendment. As I said before, it is necessary that we should understand that the sole distinction between khamar lands and raiyati lands is that if raiyati land is let to occupiers they acquire occupancy-rights, and that if khamar lands are let occupancy-rights will not accrue. The landlord is at liberty whenever he gets possession of land to cultivate it with hired labour. As has been said by my hon'ble friend Mr. Reynolds, there is ample evidence before the Government to show that a very large proportion of what are or ought to be raiyati lands in Behar has been shown or recorded as zirat or domain lands. If land was surrendered or abandoned it became zirat, and I have known cases of lands exchanged for indigo-cultivation, in which not only does the old land now made over to the raiyat for indigo appear as zirat, but the land which he gives up in exchange is also added to the stock of zirat lands. That has been carried to an extent which presses very severely on the extremely large population of Behar, which has an agrarian population of 800 to the square mile; and it was to put a stop to this state of things that this section was first introduced. So far as the subsequent sections are concerned, there is no objection. The object of the hon'ble mover of the amendment is this. You provide that land which has been cultivated by a zamindar for 12 years before the passing of the Act should be recorded as zirat land. But suppose no Settlement-officer should come on the ground for 20 years; if you put off your enquiries for 15 or 20 years, it is difficult for the landlord to prove that he cultivated particular lands for 12 years before the passing of the Act. That is certainly fair argument. But section 118 has been introduced to meet this difficulty. It allows a landlord to go before a Revenue-officer to-morrow and ask him to record the land which he holds as private lands now, and he saves himself from any difficulty about inquiry on a future date as to facts belonging to the past. The Select Committee on the whole thought that section 118 was sufficient to meet that difficulty. Then there is the danger, which my hon'ble friend Mr. Reynolds has pointed out, that if you put in the words 'or after,' and if the same system of retaining surrendered lands goes on as hitherto, suppose the landlord cultivates that land, it will become zirat land in time. On the other hand, if the Revenue-officer comes immediately after the passing of the Act, and the 12 years' cultivation accrue afterwards, then the amendment will fail to meet the object with which it is introduced. Then, as regards lands which are at present actually waste, I mean jungle land, my hon'ble friend Mr. Hunter has an amendment dealing with that particular case. I am prepared to consider that amendment, and although I do not see my way to go quite so far as the Hon'ble Mr. Gibbon desires, I am quite prepared to take a

1885.]

[Sir S. Bayley ; Mr. Gibbon.]

different view with regard to waste lands, and to secure such land under certain restrictions to the landlord who breaks it up."

The Hon'ble MR. GIBBON said :—" I would like to clear up some extraordinary misapprehension influencing the minds of some hon'ble members with regard to this matter. The hon'ble member opposite spoke of landlords' zirats. This section refers only to proprietary lands, not to the class of lands to which the hon'ble member referred. The hon'ble member spoke of the encroachments of planters on the raiyats' cultivation of the country and their misappropriation of lands, and in order to check planters misappropriating land wished to see these restrictions placed on the acquisition of zirat lands by proprietors ; but planters are not proprietors ; they are thikadar landlords, and this section will not affect them. If the object of this section is to prevent landlords in general acquiring lands for their own purposes, then that object is not effected ; if such landlords are affected at all, they will be affected under the merger clause. When a proprietor has cultivated particular lands as private lands for 12 consecutive years and thereby acquired private rights in that land, I submit that he should be permitted to acquire such rights by 12 years' cultivation whether the land was cultivated for 12 years before or after the passing of the Act."

The amendment being put, the Council divided :—

Ayes.

The Hon'ble G. H. P. Evans.
The Hon'ble H. St. A. Goodrich.
The Hon'ble Peari Mohan Mukerji.
The Hon'ble Rao Saheb Vishyanath
Narayan Mandlik.
The Hon'ble W. W. Hunter.
The Hon'ble T. M. Gibbon.

Noes.

The Hon'ble J. W. Quinton.
The Hon'ble H. J. Reynolds.
The Hon'ble T. C. Hope.
The Hon'ble Sir S. C. Bayley.
The Hon'ble P. C. Ilbert.
Lieutenant-General the Hon'ble T. F.
Wilson.
The Hon'ble J. Gibbs.
His Excellency the Commander-in-
Chief,
His Honour the Lieutenant-Governor
of Bengal.

So the amendment was negatived.

The Hon'ble BABU PEARI MOHAN MUKERJI moved that for sections 121 to 142, sections 68 to 101 of Act VIII of 1869 (B. C.) be substituted. He said :—
 “ The provisions of the Bill amount virtually to an abolition of the institution of distraint. They give the landholder nothing beyond what every plaintiff may have under the Code of Civil Procedure. They amount virtually to provisions for attachment before judgment, and in so far they are miscalled provisions for distraint. They might well have been omitted altogether. And yet the Government of India in their despatch to the Secretary of State stated in one of their proposals that they would give the landholders a modified form of distraint which would enable them to collect their rents with greater ease than at present, and thus led them to expect that larger powers would be given them in this direction. The provisions in question go quite the contrary way. I know of no complaint of the powers of distraint having been abused, at least in Bengal. The provisions of the present law are such that no abuse of the powers of distraint can be made with impunity. They give, moreover, few opportunities to the landholder or his agent for the abuse of power. They simply allow him to attach the crops by word of mouth, but he cannot interfere with the crops or with the tenant's right to do with them as he likes unless with the help of the Court. It is the fear of the consequences to the raiyat if he removes the distrained crop that constitutes the soul of the institution. If the raiyats had been a substantial class of men, possessing means and resources which the landholders could fall back upon for the recovery of their rents, the institution of distraint would have been comparatively unimportant. But, knowing, as we do, that the crops constitute in most cases the landlord's security for his rent, specially in the case of non-resident-raiyats, the abolition of the institution or a modification of it in the way contemplated by the Bill would throw the greatest obstacle in the way of recovery of rent. Besides, the expensive procedure which the Bill gives the landholders would ultimately add to the burden on the raiyat and injure him perhaps more than his landlord. In cases, again, where the raiyat will remove his crop while the landlord is engaged in getting out an attachment from Court, the latter would not only lose his rent but also his expenses. I may mention that the Presidency Conference, the Patna Conference, the Burdwan Conference, the Rajshahye Conference, the Orissa Conference, and a number of high officers of State recommend that the provisions of the present law should be maintained.”

The Hon'ble MR. EVANS said :—“ It is certain, there is abuse of distraint in certain parts of the country which needs remedy. The doubt is whether the remedy will not prove more grievous than the disease, unless the legal pro-

1885.]

[Mr. Evans; Sir S. Bayley.]

cesses of distraint are made cheaper. Hoping that steps will be taken to reduce the process-fees, I shall oppose the amendment."

The Hon'ble SIR STEUART BAYLEY said :—" I was sorry to hear the hon'ble mover of the amendment say that in writing to the Secretary of State we had given the zamindars the promise of a simplified form of distraint and that we had not carried out that promise. "The hon'ble member referred to the summary of our recommendations, which runs as follows :—

' To provide for the more speedy realization of arrears of rent when the rates are undisputed by a modified method of distraint, and an abbreviated procedure, as recommended by the Lieutenant-Governor of Bengal.'

" Unfortunately, however, the hon'ble member must have omitted to refer to the body of the despatch which explains the scheme. Had he turned to paragraph 98 of the despatch he would have seen that the Government of India wrote as follows :—

' As already mentioned, the Rent Law Commissioners recommended the abolition of distraint, but the reports of the district and divisional officers, and the urgent representations of the zamindars, led to a general concurrence of authoritative opinion that distraint must, in some shape, and at least for the present, be maintained. We accept the principle of Chapter XIV of the Bill that distraint shall be permitted on application to a Civil Court and to the agency of an officer thereby deputed.'

" Now this is the identical scheme of the Bill which has been maintained throughout and has only been modified by the provision enabling the Courts to issue *interim* injunctions and by that which enables the Lieutenant-Governor to apply the old procedure in certain special cases. We have therefore strictly carried out what we declared to the Secretary of State was our intention, and the hon'ble member's charge against us is quite baseless.

" Then he says there is no complaint or evidence of the law having been abused in Bengal. Mr. Dutt, the Collector of Backergunge, says :—

' I am very strongly of opinion that "if distraint is to be maintained at all, the process can no longer be left to the unsupervised action of the zamindaras' servants." Private distraint is so constantly and almost invariably abused, and in this district has so frequently been the occasion of breach of the peace, that it cannot be allowed to continue in the Statute-book. When the right is exercised, the chances are, nine to one, that it is exercised not with the legitimate object of realizing rent, but with the object of harassing the raiyat to compel him to comply with some other demand with which he is not bound legally to comply.'

' I am not singular in my opinion in this respect. Babu Dina Bandhu Sen, who as pleader has acted oftener for zamindars than for raiyats, and who has gained a thorough and

practical experience of the working of the law from many years' observation, states :—“ In nearly all the cases of distraint which have come to my notice as a pleader in this district, I have observed that the law has been abused.” This is the opinion of most persons that I have consulted, but Mr. Reily is of a different opinion, and maintains that the right of private distraint helps zamindars in getting their rents expeditiously, and should be retained.

‘ Private distraint should, in my opinion, be abolished altogether. The remarks made

‘ I have received abundant and almost unanimous testimony on this point. The First Munsif of Burrisal says that 95 per cent. of the applications for distraint made to him within the last 11 years of his service were made solely to compel raiyats to submit to unreasonable demands. He says, “two of the biggest zamindars in the district, Babu Kali Kissen Tagore and Raja Satyananda Ghosal, who are known to be very good landlords, have scarcely any occasion to avail themselves of the law of distraint.” It is the oppressive zamindars only who avail themselves of the law to harass raiyats. The Munsif, therefore, recommends the entire abolition of the law of distraint, which, he says, will not create any real difficulty in the realization of rent. He believes that in Bengal much greater oppression is committed by distraint through Court than by private distraint, because landlords, when bent on oppression, try to give their proceedings an semblance of legality.

‘ It was resolved at the Divisional Conference at Dacca to let the provisions of the present Bill stand as they are.’

above apply with only somewhat less force to distraints under order of Courts. Distraints are not applied for to realize rents, but to harass raiyats, and make them comply with other demands with which the raiyat is not bound to comply. This was the opinion of most of the gentlemen who attended a meeting which I convened in Burrisal to discuss the Rent Bill; and all the gentlemen, except a few zamindars, agreed that there should be a special provision in the law that an application for distraint should not be complied with by courts unless satisfied *prima facie* that there is no other means of realizing rent. My opinion is the same. Private distraint should be abolished altogether; and if

the remedy of distraint under orders of the Court be retained, there should be a special proviso that no order to distraint shall be passed unless the Court is satisfied *prima facie* that there is no other measure for realizing rent.’

“ Then the Subordinate Judge of Burdwan says :—

‘ The chapter on distraint is an improvement on the present law. I am not for abolishing distraint altogether. The supervision of the Court would be a perfect safeguard against the abuse of the power, and if timely application be made there would be no fear of the process being deprived of its practical utility.’

“ The Subordinate Judge of Backergunge also says :—

‘ In my humble opinion the power of distraint should be at once taken away from the landlords, for, as far as my experience goes, I have never seen any case of distraint in which the power was not abused by the landlord. The good landlords never distraint the crops of their tenants in any district. Only oppressive landlords distraint crops of such of their tenants who do not come to terms with them regarding the rate of rent. In these cases the distrainted crop is partly spoilt and is partly stolen by the servants of the landlords, and in this way the raiyat suffers great damages. Under these circumstances, I beg most humbly to propose that it would be better for the good of the community to take away the power of distraint from the landlords. For the purpose of realizing safely the rents due from the

1885.]

[*Sir S. Bayley ; Babu P. M. Mukerji.*]

raiyats, provisions may be made for attaching the standing crop before judgment, after instituting a suit, if the landlord can satisfy the Court that if the crop be not so attached it would be difficult for him realize the rent due from the raiyat."

"I could quote also equally strong evidence given by the Munsifs of Burrisal, Bagirhat and Serajgunge, who all agree in saying that the process is resorted to very rarely with the object of realizing legitimate arrears, but very generally for the purpose of crushing refractory raiyats. It can scarcely be said therefore that oppression has not been proved when we have such strong evidence from a number of judicial officers who have had cases of distraint brought before them. It is on such testimony as this that it was determined that the old law of distraint should not be maintained. The Behar Committee proposed in 1878 to abolish it; the Rent Law Commission was also in favour of its abolition. This was not agreed to, but it was proposed to keep it in a modified form. We have given a special power to the Local Government in certain parts of the country where the want of this process presses heavily on landholders to relax the law and allow the continuance of the old process, subject in every case to notice being given to the Court. Although I cannot gainsay what the Hon'ble Mr. Evans has said as to the terrible expense of the process to the raiyat, I can scarcely imagine that it will be a greater danger to the raiyat or worse than that from which he now suffers."

The Hon'ble BABU PEARI MOHAN MUKERJI said:—"The hon'ble member in charge of the Bill referred to the opinions of the District Officer of Backergunge and the Subordinate Judge of Burdwan in respect of the abuse of the law, but they don't speak from their own experience; they considered the question theoretically and thought that the law was liable to abuse. It is only the Subordinate Judge of Backergunge who spoke of his experience; and what weight should be attached to this opinion I leave the Council to determine, knowing, as we do, that in no district have the raiyats got more power in their hands than in Backergunge; and in no place therefore are abuses less likely to occur."

The amendment was put and negatived.

The Hon'ble BABU PEARI MOHAN MUKERJI moved that clause (b) of section 153 be omitted. He said:—"This clause gives a final jurisdiction in the trial of suits the value of which does not exceed Rs. 50 to special officers appointed by the Local Government. This, I submit, is a retrograde move. It takes away the constitutional right of appeal, and gives in its place a provision the proper working of which will depend upon the care with which the Local Government will select the officers. It is another instance of the power which the Bill gives to the executive authorities to interfere with the judicial administration of the country.

[*Babu P. M. Mukerji ; Mr. Evans ; Babu P. M. Mukerji.*] [9TH MARCH,

The value of a suit might not exceed Rs. 50, but that is no index of its importance to the parties concerned. It might be a typical case, the result of which would influence the settlement of a dispute between the whole body of the raiyats of a village with their landlord. It might be a case the decision in which regarding the question of instalments by which rents are payable would settle a long-standing dispute with the raiyats of a village. In all such cases the result of the suit is very important both to the landholder and to the raiyat. I should be sorry to see a constitutional right taken away and a provision given in its place the efficacy of which will depend upon a proper exercise of the powers of the executive authorities."

The Hon'ble MR. EVANS said :—" I object to the amendment. No doubt an appeal is taken away in certain cases, where the suit does not exceed Rs. 50, but this is not so in suits in which a question of title to land or of right to enhance or vary the rent of a tenant or of the amount of rent annually payable by a tenant is in dispute. The net result is that an appeal is only taken away in that class of cases where the question really is merely, taking it that the rent is known, whether the rent has been paid or not. Not only do I object to the amendment, but I am surprised to find it come from that quarter. I should have thought zamindars would not wish to be harassed by delays in the execution of decrees arising from vexatious appeals."

The Hon'ble BABU PEARI MOHAN MUKERJI said :—" It is not merely the fact of payment or non-payment which is involved in such cases. Besides the cases mentioned in the proviso, there may be other cases of importance to the zamindar ; for instance, cases which may influence the decision of many other suits involving questions of instalment of rent or questions of custom."

The amendment was put and negatived.

The Hon'ble BABU PEARI MOHAN MUKERJI moved that section 156 be omitted. He said :—" The provisions contained in this section are opposed to the judge-made law on the subject. It has been held by the Hon'ble Judges of the High Court that when a tenant is ejected by order of Court the crops on the land go with the land to the landholder. But this section provides elaborate rules for the purpose of giving the raiyat a right to enter upon the land and to rear and reap the the crops after he has been ejected. When a decree for ejectment severs all connection between the raiyat and his landlord, I do not see what considerations can justify such a provision. The Bill shows no consideration for the crops of occupancy-raiyats which would go to the purchaser by sale of their holdings.

1885.] [*Babu P. M. Mukerji; Sir S. Bayley; Mr. Hunter; Babu P. M. Mukerji.*]

Why should non-occupancy raiyats be deemed entitled to greater consideration in this respect, specially when they may protect themselves from ejection by payment of the amount due by them?"

The Hon'ble SIR STEUART BAYLEY said:—"I would point out that the obvious difference between sale and ejection is this; when a raiyat is sold up he gets the money which includes the value of the crop on the ground. Why when he is ejected should he lose it? In regard to this point the Rent Commission said:—

'There are in the existing law no provisions as to the *away-going crop*; and, as a natural consequence, when a tenant is ejected while the crop is on the ground, the right to this crop is a constant source of dispute and litigation. We have enacted that when a raiyat is ejected in execution of a decree—and this we have just shown is the only way in which he can be ejected—and there are upon the land at the time of the ejection growing crops or other ungathered products of the earth, which but for the ejection such raiyat would have been entitled to reap or gather, such raiyat shall, notwithstanding such ejection, be entitled to reap or gather such crops or products, and may use the land for the purposes of tending, reaping, gathering and removing the same; and in the event of his doing so, he shall be liable to pay a reasonable sum for the use and occupation of the land for these purposes (section 80). We have, however, thought it reasonable to allow the landlord an option of taking such crops or products at a reasonable valuation, if he gives notice of his intention to do so at the time when he applies for execution. If the landlord and tenant cannot agree as to the value of the crops or products the Court may, upon the application of either of them, determine such value, and the order so determining such value shall have the force of a decree.'

"The principle seems a very sound one that the landlord should not by choosing his time for ejection not only ruin his raiyat but should himself benefit by the crop in the ground which the raiyat has sown and which he is entitled to reap."

The amendment was put and negatived.

The Hon'ble MR. HUNTER moved, on behalf of the Hon'ble Mr. Amir Ali, that section 156, clause (c), be omitted. He said:—"The question has been fully discussed by the Select Committee."

The amendment was put and negatived.

The Hon'ble BABU PEARI MOHAN MUKERJI moved that clauses (c), (e) and (f) of section 160 be omitted. He said:—"These clauses introduce material changes in the present law as to what should be deemed protected interests when a

[*Babu P. M. Mukerji ; Sir S. Bayley ; Babu P. M. Mukerji.*] [9TH MARCH, 1885.]

tenure is sold for its own arrears. Clause (c) gives protection not to leases given for building or manufacturing purposes at a fair rate of rent, but to all leases of land on which buildings, &c., have been erected, perhaps without the consent of the landlord, and reserving, it may be, only nominal rents; clause (e) extends the protection to judicial leases granted to non-occupancy-raiyats; and clause (f) gives protection to all leases granted by the outgoing tenant, if the rents reserved on them were fair and equitable at the time the leases were granted. The result of these provisions would be to give a tenure-holder the power of creating leases in favour of his relatives and dependents which would absorb the whole profits of the tenure, and then to put the tenure up to sale for the purpose of entrapping unwary purchasers. These clauses would encourage fraud and collusion and give rise to much litigation."

The Hon'ble SIR STEUART BAYLEY said:—"I wish to meet the hon'ble member on one point on which he spoke, but I would first point out that the protection to subordinate interests against which the hon'ble member protests is precisely the protection given in case of sales for arrears of Government revenue. I admit, however, that in regard to clause (c), though the danger of injury is such as may safely be overlooked in regard to its bearing on Government revenue, yet the danger of seriously lessening the rent of the superior holder by protecting absolutely all interests created under clause (c) is not imaginary, and we ought if possible to safeguard the landlord against it. It can be met by an adaptation of section 13 of Bengal Act VII of 1868, and I propose therefore to insert a clause to that effect. It will be precisely the same as the section of the Bengal Act in a modified form so as to make it run with this chapter. It will come in after section 167 of the Bill. To this extent I am prepared to meet the hon'ble member's objection, but no further."

The Hon'ble BABU PEARI MOHAN MUKERJI expressed his willingness to accept the proposed section as far as it went, and this was then agreed to.

The Hon'ble BABU PEARI MOHAN MUKERJI'S amendment was put and negatived.

The Council adjourned to Wednesday, the 11th March, 1885.

D. FITZPATRICK,
*Secretary to the Government of India,
Legislative Department.*

SIMLA :
The 4th May, 1885.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 11th March, 1885.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble T. M. Gibbon, C.I.E.

The Hon'ble R. Miller.

The Hon'ble Amír Ali.

The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.

The Hon'ble H. J. Reynolds.

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

The Hon'ble Peári Mohan Mukerji.

The Hon'ble H. St. A. Goodrich.

The Hon'ble G. H. P. Evans.

The Hon'ble Maharájá Luchmessur Singh, Bahádur, of Durbhunga.

The Hon'ble J. W. Quinton.

BENGAL TENANCY BILL.

The adjourned debate on the Bill was resumed this day.

The Hon'ble BĀBŪ PEĀRI MOHAN MUKERJI moved that clause (a) of subsection (2) of section 163 be omitted. He said :—" My remarks on this clause will also apply to my motions to omit sections 164 and 168. These sections introduce changes in the present law, the necessity of which has never been experienced. They provide for sales of tenures subject to registered incumbrances in the first place, and free of such incumbrances only when the proceeds of the first sale prove

[Bábu P. M. Mukerji ; Mr. Evans ; Mr. Gibbon.] [11TH MARCH,

inadequate to satisfy the decree. The present law is that, whenever a tenure is sold for its own arrears, it is sold with power given to the purchaser to avoid incumbrances created by the outgoing tenant. It is a provision which has a wholesome effect not only in checking the progress of sub-division and sub-infeudation, but also in preserving tenures in their pristine integrity. The result of the contemplated changes will be quite the other way. They will perpetuate sub-divisions and sub-infeudations, and reduce the value of tenures at every successive sale. But in whose interest are these changes advocated? The superior proprietor will be delayed in the recovery of the amount of his decree, and the security for his rent will diminish with every sale of the tenure; the judgment-debtor will be saddled with unnecessary costs, and the sale will fetch a much less price than what it would have otherwise done; while the purchaser will have to give his bid in the dark not knowing what incumbrances relating to the property have been registered within the last 10 or 15 years, and he will be exceptionally fortunate if he does not find in the end that he has made an extremely bad bargain. When not one of the three interested parties is likely to benefit by the proposed modifications in the present law, I hope hon'ble members will see fit to maintain the present law in its integrity."

The Hon'ble MR. EVANS said:—"I do not think the judgment-debtor should benefit by the avoidance of his incumbrances. As I understand the matter, that it is usual in sales for arrears of the Government revenue only because it is absolutely necessary for the protection of Government revenue and only so far as it is thought necessary, and there is power to Government to cancel the sale in cases of hardship. No man ought to be allowed to say that he incumbered the tenure but now wishes to sell free of incumbrances. The only admissible argument will be the protection of the superior landholder. I do not think there is any great hardship to the superior landholder in protecting as far as we have done *bonâ fide* incumbrances."

The Hon'ble MR. GIBBON said:—"I oppose the amendment. It is only necessary to provide means to the landlord to recover what is due on account of rent. The Bill provides that in every way possible. It provides that the tenure shall only be sold in the first instance subject to incumbrances; but if the amount of the purchase-money does not cover the amount of the decree, the tenure can be sold again free of all incumbrances. It is necessary in all other cases to protect incumbrances. Some tenures under my management consist of hundreds of acres, and the incumbrances are of very large amounts, from Rs. 20,000 to Rs. 40,000

1885.] [*Mr. Gibbon ; Sir S. Bayley ; Bábú P. M. Mukerji ; Mr. Gibbon.*]

and simply because a comparatively small sum of five or six hundred rupees may be due to the landlord as rents, to allow that the tenure should be sold free of incumbrances in order to recover such a small sum would be very hard to landed capitalists. I think it very necessary to give the protection which the Bill provides."

The Hon'ble SIR STEUART BAYLEY said:—"It seems very obvious that there is real necessity to protect incumbrances on tenures. The tenure-holder, has a right to do what he likes with the land as long as he pays the superior landlord the rent secured upon it, and, as the Hon'ble Mr. Gibbon has pointed out, many of these incumbrances are such that in the interests of public policy they should be secured. Is it reasonable that the tenure-holder, having got a large bonus given for permission to build or to dig a tank or to erect a manufactory, should by defaulting allow the tenure to be sold up and leave the interests of these incumbrancers absolutely at the mercy of the purchaser? It is true that the tenure-holder will get a larger sum if the tenure is sold with power to avoid all incumbrances, but what does that mean? It means that having taken a bonus for permission to make the incumbrance, he again gets paid by the purchaser for permission to avoid it. He gets the value twice over by a deliberate swindle of the incumbrancer. If there is really danger to the rent of the superior holder I think it ought to be safeguarded, and with the view of giving the necessary protection I have proposed the section next in the list. But as long as that is safeguarded I cannot see that any injury will befall to any other party, and it is much in the interest of public policy not to allow the tenure-holder deliberately to swindle the incumbrancer."

The amendment was put and negatived.

The Hon'ble BĀBŪ PEĀRI MOHAN MUKERJI moved that for the word 'thirty' in sub-section (4) of section 163 the word "twenty" be substituted. He said:—"The present law allows a sale to take place after 20 days from the date of the proclamation of sale. The extension of the minimum period to 30 days will simply add to the delay in the recovery of the amount of the decree. No complaint of hardship has been made on the ground of the procedure for the sale of tenures for their own arrears being different from that which obtains with regard to other sales. I therefore fail to understand why this additional source of delay should have been introduced in a Bill which was started with the distinct object of giving landlords facilities in the recovery of rent."

The Hon'ble MR. GIBBON said:—"I think we have gone quite far enough under section 163 to change the law. The present law, as far as my experience goes, allows you first to attach the property and afterwards appoints a day for

BENGAL TENANCY.

[*Mr. Gibbon ; Sir S. Bayley ; Bábú P. M. Mukerji ;* [11TH MARCH,
Sir S. Bayley.]

the proclamation of sale. The proclamation always gives the tenant time to protect his own interest ; whereas we propose now that the attachment and proclamation shall be simultaneous, and we only give 30 days. If you reduce that period to 20 days and still maintain the new provision of the law which necessitates attachment and proclamation at the same time, we shall be doing the judgment-debtor very material injury. It is also necessary to make the intended sale as public as possible and to give all persons who may have incumbrances on the holdings, and whose incumbrances would be voided by the sale, time to protect their own interests.

The Hon'ble SIR STEUART BAYLEY said :—“ The Hon'ble Mr. Gibbon has stated the reason which induced the Select Committee to make this alteration. I believe I am right in saying that 30 days is the term in the Civil Procedure Code, and 20 days in the present law refers to tenures and not to occupancy-rights, which are sold in 30 days.”

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—“ With reference to what the Hon'ble Mr. Gibbon has said I wish to observe that it is not necessary under the present procedure that there should be a process of attachment before proclamation is made for the sale of the tenure. The tenure or holding being hypothecated for its own rent, from the nature of the case, no attachment is necessary, and therefore the additional convenience to which the hon'ble member points, far from being a convenience at all, will be so much more delay to the landlord.”

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI by leave withdrew the amendment that section 164 be omitted.

The Hon'ble SIR STEUART BAYLEY moved that to section 167 the following sub-section be added :—

“(4) When a tenure or holding is sold in execution of a decree for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in section 160 (c), the purchaser may, if he has power under this chapter to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.”

“ This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.”

1885.] [Sir S. Bayley ; Bábu P. M. Mukerji ; Mr. Gibbon.]

He said :—“ This is the sub-section which I propose to insert to meet the wishes of my hon’ble friend Bábu Peári Mohan Mukerji. It is a reproduction of section 13 of Act VII of 1868 (B.C.), and its effect is that if the incumbrance is of such a nature as to diminish the value of the security for rent, the purchaser can enhance the rent to a fair standard.”

The Hon’ble BĀBŪ PEĀRI MOHAN MUKERJI said :—“ I think the proposed amendment will supply a defect in section 160, and I therefore support the motion.”

The amendment was put and agreed to.

The Hon’ble BĀBŪ PEĀRI MOHAN MUKERJI by leave withdrew the amendment that section 168 be omitted.

The Hon’ble MR. GIBBON moved that section 174 be omitted. He said :—“ This, I think I am right in saying, is a perfectly new provision of law, and will have an effect which was not intended. It is intended to give the judgment-debtor 30 days’ grace after the property is sold ; it will allow him, after the property is sold, to pay the amount of the decree plus 5 per cent. of the purchase-money and thus recover his holding. The practical effect will be to encourage a tenant whose property is put up for sale to put off the day of payment. It will prevent *boná fide* agriculturists and tenants from coming forward to purchase. In the first place, they cannot afford the waste of time ; it necessitates his going to the Court to purchase, to go 15 days afterwards to purchase, and again 30 days after to see whether the sale has been confirmed or the money has been paid by the tenant, and again to recover his money from the Court. The very uncertainty will deter people from paying proper value, and it will deter agriculturists from purchasing. It will encourage land-jobbing in its worst shape by forcing the purchase of all holdings into the hands of the hangers-on about the Courts—men who will not purchase them with any intention of retaining them, but purchase them because they see them going for little or nothing and may make a profit by their re-sale, or at any rate secure their 5 per cent. on the purchase or on their bid. There is another reason for not allowing this provision to become law. The law allows a judgment-debtor to set aside a sale of his property on account of any irregularity in the sale, and I would ask hon’ble members to try to realise the effect this provision will have on the minds of the Courts when the judgment-debtor goes forward to set aside a sale on the ground of irregularity. The Court would at once refuse his application on the ground that he should have paid up the amount of the decree

instead of applying under section 311 of the Civil Procedure Code. It will retard the recovery of rents, injure the landlord, and throw property into the hands of speculators and land-jobbers. It is bad policy."

The Hon'ble MR. EVANS said :—" I am exceedingly sorry to differ from my hon'ble friend in regard to a practical matter of this kind in which no doubt he has had considerable experience, and his judgment is therefore entitled to great weight. But it appears to me that this is a very important provision of the Bill. The tenacity with which proprietors and raiyats in this country cling to their land is remarkable. They are improvident and get into arrear ; but when they find they are to be dispossessed, they struggle to protect their interests, and they commit wholesale perjury in order to do so, and they proceed by a regular system of obstructing the execution of the decree. When the sale has once been made, it is a matter of common form for them to lodge a petition under section 311, alleging every conceivable irregularity ; they deny receipt of notice of sale, they say the process peons were suborned, and they produce a number of villagers to say that they never saw the peon, and they allege every other possible irregularity. Suppose the debtor succeeds in proving irregularities, he has further to prove that they caused substantial loss. He then goes in with a number of friends and neighbours to exaggerate the value of the holding, and swears that it was sold for less than it ought to have been sold for, and that the decrease in price was due to these irregularities ; and if the Judge of the first Court decides against him, he, as a rule, appeals up to the High Court ; and the Courts very often, when they can, try to help the man, but very often they are unable to do so. Execution proceedings are among the most tedious and expensive proceedings we have, and all Judges have lamented this particular cause of litigation. For the purpose of stopping this class of litigation which is of an exceedingly bad character and is more full of false evidence than any other class of litigation, I think this provision is a very good one. It is intended to check these evils and give relief to the people. It will also afford great relief to execution-creditors. When a man finds that his land is lost, he has got the chance of recovering it by paying 5 per cent. in excess of the purchase-money, and if he does so the whole thing is over ; the decree-holder has got his money without a long litigation, and the purchaser is not damaged, because he too gets back his money, with 5 per cent. in addition. I have long thought that some measure of this kind introduced into the Civil Procedure Code might have a good effect. This was thought a good opportunity for trying the experiment, and a number of Judges to whom I have spoken think it will be a valuable provision and will work

1885.] [Mr. Evans ; Bábu P. M. Mukerji ; Rao Saheb V. N. Mandlik.]

well. The getting rid of the class of cases I have described will be of immense good. The only person in any way prejudicially affected is the purchaser, but we have secured his interest by giving back his money with 5 per cent. by way of interest. The great delay and uncertainty at present existing in these cases will be greatly diminished. The two other persons mainly concerned are the judgment-creditor and the judgment-debtor, and they will both, I think, be benefited. The intending purchasers will not as a rule be discouraged from bidding, for there will be less chance of long litigation, which at present makes property at execution-sales fetch low prices, and discourages *boná fide* investors, and encourages speculators in litigation. I, therefore, strongly object to the amendment, and ask the Council to retain this provision in the Bill as being possibly a solution which, if I am right, will be really useful."

The Hon'ble BĀBŪ PEĀRI MOHAN MUKERJI said :—" I also oppose the motion. I fail to appreciate the force of the arguments advanced by the hon'ble mover in support of it. A purchaser of a tenure or holding at an auction-sale always makes the purchase subject to the risk of the sale being set aside on the grounds mentioned in section 311 of the Code of Civil Procedure. The section in question will not add to that risk. There is no reason, therefore, why the sale should fetch a less price than it would have otherwise done. The costs incurred in trials regarding the validity of sales are sometimes enormous, and it usually takes years before the question is finally decided. This new provision will remove one of the most fruitful sources of litigation, and, while it will give back his property to the judgment-debtor without putting him to harassment and expense, it will give the purchaser a reasonable profit by the transaction, and save him from the costs and suspense attendant on a protracted litigation. I hope hon'ble members will recognise in this new section a great improvement on the present law on the subject."

The Hon'ble RĀO SAHEB VISHVANATH NARAYAN MANDLIK opposed the amendment. He said :—" I think the section will introduce, in addition to other troubles, the speculative element against which all the Civil Courts have been struggling. Although it is in one sense an attempt to relieve tenure-holders and occupancy-raiyats by opening a door to repentance, I think in all these matters the quickest step is the wisest step for all parties concerned. A man who has allowed so many opportunities to escape him is not the man for whom we ought to plead. The purchaser is no doubt sufficiently recouped by getting back his money with interest ; but the real difficulty is the opportunity given for speculation, and I think that can do no good."

[*Mr. Amír Alí ; Mr. Gibbon ; Bábú P. M. Mukerji.*] [11TH MARCH,

The Hon'ble MR. AMÍR ALÍ said :—“ I also oppose the amendment. The reasons in favour of this provision have been fully given by my hon'ble friend Mr. Evans, and it is unnecessary for me to detain the Council by going over the same ground. Any one who knows the practical difficulties arising under section 311 of the Civil Procedure Code will appreciate the boon of such a provision in this Bill. From my own experience I can say that the majority of purchasers will be glad to recover their money with a substantial interest instead of being engaged in harassing litigation to support the purchase.”

The Hon'ble MR. GIBBON said :—“ This provision is not a substitute for section 311 of the Civil Procedure Code, but an addition to it. You maintain all the drawbacks of the present law and give the judgment-debtor another excuse for not paying up on the due date. The practice is very different in regard to estates taken under management by Government to save the old proprietors. Estates are not first sold up and taken into management afterwards, but the Collector, acting under authority, realises the difficulty of the debtor and takes charge of the estate beforehand. The Government does not proceed by putting up the estate to sale and inducing persons to buy on speculation. This provision would have the effect of depreciating the value of the property by deterring people who would otherwise be purchasers from spending their time to make purchases which will not be confirmed. The present law declares that a purchaser under a decree should pay the amount within 15 days ; he must go one day to make the purchase, he must go 15 days afterwards to pay the purchase-money, and he must go again to see if the sale has been confirmed. Any would-be agricultural purchaser would be deterred from making a purchase under such circumstances.”

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that clause (*d*) of sub-section (*1*), sub-section (*2*), and clauses (*c*), (*e*), (*g*) and (*h*) of sub-section (*3*), of section 178 be omitted. He said :—“ In imposing various restrictions on the freedom of contract in transactions between landlord and tenant the legislature has proceeded on the hypothesis that the vast majority of raiyats form a body of men who are incapable of understanding and taking care of their own rights and privileges. Nothing could be more erroneous. It is seen from the preamble of Regulation IV of 1794, that although the legislature of 1793 enjoined the exchange of written engagements between landlord and tenant, the raiyats deliberately refused to enter into written engagements in view of protecting their own interests.

1885.]

[*Bábú. P. M. Mukerji ; Mr. Evans.*]

I shall read to the Council what the Rent Commission said on the subject in their report :—

“ The legislature of 1793 directed its efforts to the introduction of written engagement between landlord and tenant, and the Regulations of that time contain more than one homily upon the advantages that would surely accrue to both parties from the use of such written engagements ; but neither party was in the least persuaded or converted, and finally a law was rescinded in which neither party saw sufficient benefit to himself to induce him to enforce it against the other. The little use made of the provisions of the existing law, which enable the raiyat to sue for a pattá or the landlord for a kabúliyat, goes far to show that the race of landlords and tenants in Bengal has not much altered its mind on this point since the time of the Permanent Settlement. The experience of the registration offices indicates that writing is commonly used in the creation of new tenancies ; and we think it more advisable to leave the adoption of writing to its natural growth, which will no doubt be encouraged by the spread of education amongst the cultivating classes, than to force upon the people a law fashioned according to Western rather than Eastern ideas.”

“ When the raiyats were so very careful of their rights in 1793, hon’ble members might safely presume that they are much more so at present, now that their condition has immensely improved, and there has been a vast progress in the spread of education. Considering what a vast area of land still remains to be cultivated, I confidently submit that no country in the world would derive more benefit than Bengal from perfect freedom of contract in land. In the interests of agriculture and of the education which Government is so desirous of giving to the people in habits of self-government, it is essential that perfect freedom should be accorded in this matter. Laws which offer such violence to the natural rules of supply and demand can never be successful in their operation, and it is more than doubtful how far these restrictions to contract would prevent parties from having recourse to shifts and devices for the purpose of evading the law. In reference to this question I shall ask the Council to bear in mind that the original proposal of the Government of India, which received the sanction of the Secretary of State, was to restrict freedom of contract so far only as it might bar the accrual of the right of occupancy. I therefore move that the clauses of this section which limit freedom of contract beyond questions affecting the accrual of the right of occupancy be expunged from the Bill.”

The Hon’ble MR. EVANS said :—“ I expected to hear some statement regarding the particular objections to the particular sub-sections mentioned in the amendment. The only one to which I attach real importance is that in which the hon’ble member agreed with us, namely, that a raiyat should not be allowed to contract himself out of the occupancy-right ; the others stand each one on their own merits

[*Mr. Evans ; Rao Saheb V. N. Mandlik ; Mr. Reynolds.*] [11TH MARCH,

as regards their necessity, and I do not propose to offer any remarks upon them except two. As regards sub-section (3), clause (g), which is mentioned in the amendment, I will support the motion ; but the reason why I do so is that I altogether object to section 40 ; but inasmuch as that matter has been passed by the Council I won't state my objections at length. I do not think it safe or desirable to entrust to a Sub-divisional Officer or a Collector the question of adjudicating on the expediency of commuting rents in *bhaoli* tenures. There are strong reasons why the tenure has prevailed, and I believe in the wisdom of retaining it. I do not think such an officer who may be a stranger to the district is a good judge as to whether a *bhaoli* tenure should be swept away. Therefore, as I object to section 40, I of course object to this sub-section, which makes inalienable the right of the landlord to make an application to see how much discretion the Revenue-officer has. If he has good discretion, he will refuse the application ; if he is an officer with advanced opinions, who wishes to sweep away all the *bhaoli* tenures of the country, he will grant the application ; therefore, as far as that is concerned, I will support the amendment. There is one other matter to which I wish to refer, and that is clause (e), under which all raiyats are to have an alienable right to sub-let subject to the provisions of this Act. With regard to the occupancy-raiyat, the question has been discussed, and the arguments are strong in favour of allowing it to a certain extent. We have placed large restrictions, and I think properly so. But this clause goes further ; it provides that every raiyat is to have an alienable right to sub-let. If a raiyat is let in on a written lease, he has to go out at the end of the term, and he cannot give a sub-lease beyond his own term. But with regard to the non-occupancy raiyat, who has no written contract, he will have, as the section stands, a right to sub-let at fair and equitable rates, subject to the proviso in section 46 ; he may get a judicial lease at the end of five years, and a good deal of confusion will be caused. If the clause is not struck out, I think the word 'occupancy' should be inserted before the word 'raiyat.'"

The Hon'ble RAO SAHEB VISNVANATH NARAYAN MANDLIK said :—" I support the amendment, and I am sure it does not go far enough. I think there ought to be a distinction between occupancy and non-occupancy raiyats, and there ought to be no general provision against raiyats and superior landlords as far as possible adjusting their mutual differences without resort to the machinery of the Courts."

The Hon'ble MR. REYNOLDS said :—" I am willing to accept the suggestion which has been made by the Hon'ble Mr. Evans as to clause (e), but I cannot support the motion of the Hon'ble Peári Mohan Mukerji.

1885.]

[*Mr. Gibbon ; Sir S. Bayley.*]

The Hon'ble MR. GIBBON said :—" I oppose the amendment. The hon'ble member has nowhere said that these contracts are to be what the contract law requires,—contracts to be made for lawful consideration,—and only such contracts are valid. If this amendment is carried, the effect will be that the occupancy-raiyat, who is under no necessity to enter into a contract under the Bill, whose position is already assured, if he is induced to enter into any contract, will be induced to write away rights already accrued to him. With reference to the remarks which fell from the Hon'ble Mr. Evans, I would not object to a permissive section being entered in the Bill to allow contracts for lawful consideration. Take as an example, with reference to the commutation of rents in kind, if it were to be declared that the tenant may enter into a contract with his landlord not to sub-let in consideration of the landlord allowing him to deliver only one-third of the produce in the future in place of the one-half he has been in the habit of delivering, I would not object to such a clause being inserted ; but if the sole object is to permit the tenant to contract himself out of rights already acquired under the Bill, I object ; but I do not think at this stage of the Bill such a proposal would be adopted. With reference to the question of sub-letting where a raiyat has been let in on an initial lease, the tenant might be allowed to contract himself out of his right to sub-let. But with reference to occupancy-raiyats, with whom it is not necessary to enter into any agreement, the only result would be the avoidance of the accrual of all rights."

The Hon'ble SIR STEUART BAYLEY said :—" I am sorry I cannot accept the amendment. The hon'ble member bases his motion, first of all, on the ability of the raiyat to look after his own interests. I am unwilling to detain the Council on this subject, but I would remind hon'ble members of the contracts which were read out two years ago by my hon'ble friend Mr. Ilbert and myself, and which were specimens of 1,000 or 1,200 of the same kind. I can only say, with regard to what fell from the hon'ble member as to the inability of the legislation of 1793 to force raiyats to contract with their landlords, that recent experience has shewn us that modern landlords have at all events been far more successful. I need not enquire into the reason, but it is the fact that landlords can get raiyats to give the extraordinary contracts to which I have alluded, and I do not suppose that anybody who has seen those contracts will doubt that they were given without the exercise of the least discretion on the part of the raiyats who gave them. The hon'ble gentleman objects to legislation framed according to Western rather than Eastern ideas ; but the contracts to which I refer are unfortunately drawn up on Western models, but under Eastern conditions, that is to say, they purport to be bargains between equals, but are really extorted under pressure of poverty,

or ignorance, and it is precisely for that reason we do not desire to maintain the Western doctrine of their inviolability. The old shape of the pattá did not put any restrictions on the customary rights of the raiyat. These new forms of lease taken from Western models are calculated to break down existing occupancy-rights, to prevent the accrual of occupancy-rights, to make the raiyat pay the whole of the land cesses while the law says he has only to pay half, to make him give up his right to appeal for protection to the Courts. It is because we have seen numbers of contracts with such provisions that I say that without these safeguards, which, as I shall show presently, were in the view of the Government of India when they wrote to the Secretary of State, it would be absolutely fallacious to give them the rights which we are giving them. The hon'ble gentleman has said that in our despatch to the Secretary of State freedom of contract was only to be restricted in regard to the accrual of occupancy-rights. But there is nothing in that despatch to show that what we referred to was restricted to the time antecedent to the accrual of occupancy-rights. The Government of India said :—

Nor need we dwell on section 20 of the Bill, which provides that no contract, whether entered into before or after the commencement of the enactment, shall in any case debar a raiyat from acquiring a right of occupancy in raiyati lands used for agricultural purposes. Such is the power of the zamíndárs, so numerous and effective are the means possessed by most of them for inducing the raiyats to accept agreements which, if history, custom, and expediency be regarded, are wrongful and contrary to good policy, that to uphold contracts in contravention of the main purpose of the Bill would be, in our belief, to condemn it to defeat and failure. It is absolutely necessary that such contracts should be disallowed : and in this conclusion we have the support, not only of the Bengal Government, but also of the almost unanimous opinions of the Bengal officers.'

“ This, the hon'ble member said, referred only to the accrual of occupancy-rights, but your sections go beyond it. In terms this is quite true. But after all what is the occupancy-right ? The occupancy-right is made up of a bundle of incidents ; and therefore to say that we restrict your contracting yourself out of your occupancy-right, but you make contract yourself out of any or all of the incidents which go to make up that right, means nothing. With regard to what fell from my hon'ble friend Mr. Reynolds, the point is this : where the two parties in the case of a *bhaoli* holding are not both of them willing to continue the arrangement, is it desirable to maintain their relations in such a shape ? Whether the proposal for a change of the system under which rent is paid comes from the raiyat or the zamíndár, it is very desirable that somebody should settle how it should be done and on what terms, and we put in the Revenue-officer as the person most able

1885.]

[*Sir S. Bayley ; Mr. Ilbert.*]

to judge as to the interests for both parties. If we leave section 40 in the law, that is, that either the landlord or the raiyat has the right to go into Court and ask for a commutation of rent, the provision in this section of the Bill is, I think, a necessary one. It is impossible that any contract should prevent a raiyat or a landlord from going into Court, and it would be very wrong to allow it to have that effect. In regard to the other point as to sub-letting, I am quite willing to accept my hon'ble friend Mr. Evans' proposal; and therefore I move that in sub-section (e) the word 'occupancy' be inserted before the word 'raiyat.' "

The Hon'ble MR. ILBERT said :—“ I feel some doubt about the proper way of dealing with this amendment. The scope of the Hon'ble Peári Mohan Mukerji's speech is wider than the motion in support of which the speech was delivered; for he does not move the omission of the whole section, and I understand him to admit that there are certain parts of it to the retention of which he would not raise any objection. There is not any amendment on the notice paper which raises the broad question whether there are or are not certain classes of agreements between zamíndárs and raiyats to which the ordinary law of contract ought not to apply. And I presume that the reason why this question is not raised is because it is almost universally admitted that there are such classes of agreements. We all know the theory on which the ordinary law of contract is based. It presupposes equality between the parties to the contract, full knowledge and appreciation by each party of the nature of the rights to which he is entitled, and a deliberate intention on either side to modify those rights in a particular manner. Gaius and Titius, or Ram Das and Ram Bux, meet in the marketplace and strike a bargain, and when they have done so the Courts hold them to their bargain. But the circumstances which lead up to the execution of a kabúliyat by an occupancy-raiyat are of a very different character. The raiyat's ordinary rights, the rights with which a kabúliyat purports to deal, are not based on contract, and the whole notion of their being capable of regulation by contract is unfamiliar to him. His rights are based on occupation and regulated by custom. He did not come in under a lease by which the landlord agreed to let and the tenant agreed to take a specified piece of land, for a specified term, under specified conditions; and if any instrument purporting to be such a lease can be produced against him, it is usually a fiction. He simply occupies the land, as his forefathers have occupied it before him, subject to the observance of certain conditions, the general character of which is approximately known and understood, though they have never been reduced to a definite written form. There is a nebulous border-land between

[Mr. Ilbert ; Bábú P. M. Mukerji.]

[11TH MARCH,

his rights and those of the zamíndár which has, from time immemorial, been the subject of disputes between them, and with respect to which the contest is under ordinary circumstances not unequally waged between persistent worry on the one side and passive resistance on the other. But there are certain central rights which we know very well that the raiyat would not give up except under the pressure of absolute necessity—rights which are essential to his status ; and if we found that he has attached his signature or mark to a kabúliyat purporting to give away these rights, we may feel morally certain that the signature has been obtained under circumstances which are described in the Indian Contract Act as constituting undue influence. In fact, whilst the elements of an ordinary legal contract are offered on the one hand and acceptance on the other, the characteristic elements of the transaction which results in the execution of such kabúliyats as these are pressure on the one side and submission on the other. It is the execution of instruments of this nature that we wish to prevent. We desire to prevent the occupancy-raiyat from contracting or appearing to contract himself out of rights which are essential to his status. We have no desire to make this section more stringent or more comprehensive than the nature of the case requires, and if it can be shown that any of its provisions can be relaxed or modified without any serious risk of allowing the main objects of our legislation to be defeated, I should be most ready to accept the modification.”

The Hon'ble BĀBÚ PEĀRI MOHAN MŪKERJI said :—“ Two statements have been made by the hon'ble member in charge of the Bill with regard to which I should like to say something. The proposal which was made by the Government of India to the Secretary of State was embodied in this way—‘ to declare that no contract shall debar a raiyat from acquiring the right of occupancy in raiyati land.’ And the Secretary of State in giving his sanction, confined himself to the suggestion so embodied in that paragraph, because he said :—‘ I proceed to communicate to you my opinion on the proposals summarised under 13 heads in the 108th paragraph of your letter.’ So that there can be no mistake as to what the proposal was to which the Secretary of State gave his sanction. The hon'ble member has advanced the argument that when the Secretary of State gave his sanction to the restriction of the right of contract barring the accrual of rights of occupancy, that sanction extended to the restriction of all contracts relating to every incident which affects the right of occupancy. I submit that that argument should be taken for what it is worth. As regards the other statement made by the hon'ble member that the kabúliyats in the case of the Mymensingh and Pubna raiyats show that the raiyats are too ignorant and helpless to secure

1885.]

[*Bábu P. M. Mukerji ; Sir S. Bayley ; Mr. Hunter.*]

their own rights, I submit that unless hon'ble members have all the correspondence, official and demi-official, relating to those kabúliyatş placed before them, the Council is not in a position to judge whether very unjust influence or any coercion was used by the landlords for the purpose of getting those kabúliyatş. I know that the public Press distinctly stated at the time that members of the service had used their influence to induce the raiyatş to repudiate their kabúliyatş, that it was not their voluntary act, and that statement has not up to this time ever been contradicted."

The amendment was put and negatived.

The Hon'ble SIR STEUART BAYLEY then moved that for the words " a raiyat " in clause (e), sub-section (3) of section 178, the words " an occupancy-raiyat " be substituted.

The amendment was put and agreed to.

The Hon'ble MR. HUNTER moved that in section 178, after clause (i) of the proviso, the following clause be inserted, namely :—

" When a landlord has reclaimed waste land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a raiyat, nothing in this Act shall affect the terms of any contract whereby a raiyat is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a raiyat ;"

and that the numbering of clause (ii) of the same proviso be altered accordingly.

He said :—" My Lord, I move this amendment to remedy what I believe to be a serious defect in the Bill. The main provisions of section 178, which prevent the tenants' statutory rights from being defeated by special contracts, have my cordial support. But the section very properly accords a particular treatment to the reclamation of waste lands. It enables the landlords to bar the exercise of occupancy-rights during the currency of a reclamation lease—a lease which may run for an indefinite period, and which would probably run for twenty or thirty years. The Bill thus makes provision for the reclamation of waste lands by means of tenants holding under long leases. But it omits to make provision for the reclamation of waste lands by the landlord himself, working with his own servants, or with hired labour. This omission is probably due to the circumstance that the latter class of reclamation has hitherto not been common. But cases of such reclamations have come to my notice, and I am told that their infrequency is due in part to the discouragements under which they are placed even by the present law.

[Mr. Hunter ; Bábú P. M. Mukerji ; Mr. Reynolds.] [11TH MARCH,

In the only case in which, so far as I know, extensive reclamation has been effected by the steam-plough in Lower Bengal, the landholder writes to me that the present law renders such reclamation disadvantageous to the reclaiming landlord ; while under the new law no landholder would think of undertaking such reclamation, unless protected by some accidental local tenure like the *utbandi*. Yet there are several classes of reclamation which cannot be carried out by cultivators, but must be conducted by the landlord, or by a combination of neighbouring landlords, if they are to be effected at all. The Council is, I think, agreed that it is the interest alike of the cultivators and of the State that such reclamations of waste land should be undertaken. To add to the cultivated area is the most direct and the most permanent remedy for the great evil in certain parts of Bengal—over-population. But such reclamations will certainly not be undertaken by landholders if the Bill is allowed to stand as at present. My amendment only proposes to place the landholder who reclaims land at his own charges by hired labour, in as good a position as the landholder who reclaims by means of tenants on long leases. In so doing I desire to say that the amendment has been carefully framed with the intention to cover only *boná fide* reclamation of waste land. I hope that the representatives of both the landlords and the cultivators will see their way to accept an amendment, which is submitted to the Council in the interest of both."

The Hon'ble BĀBÚ PEĀRI MOHAN MUKERJI said :—" I think that in the interest of both landlord and tenant I am bound to support this amendment. It is necessary in the interests of the extension of cultivation that a provision to this effect should be made."

The Hon'ble MR. REYNOLDS said :—" I look with considerable misgiving on this amendment, not so much with regard to its use as to its possible abuse. I am averse to any provision which contemplates restrictions on the accrual of the right of occupancy. The Bill does not, it appears to me, place the reclaiming landlord in so unfavourable a position as the hon'ble mover of the amendment has represented. As long as he keeps the land after reclamation in his own possession and cultivates it by his own servants, or by hired labour the profits will be all his own, and when he lets it to a raiyat he can let it on any terms he thinks fit. The landlord has thus full opportunity of remunerating himself for his original outlay of capital. I may add that I feel some doubt whether the clause will have that effect of encouraging improvements which the hon'ble member expects from it. The raiyat may be debarred by the conditions of his lease from acquiring the occupancy-

1885.] (Mr. Reynolds ; Mr. Amír Alí ; The Lieutenant-Governor ; Sir S. Bayley ; Mr. Reynolds ; Mr. Ilbert.)

right for a period of 30 years. I cannot think that raiyats who take land on such conditions will make any improvements on it. I don't mean to oppose the amendment, as I sympathise with the object which the hon'ble member has in view, but I do not wish the amendment to pass without raising some note of warning as to what may be its effect."

The Hon'ble MR. AMÍR ALÍ said :—" I support the amendment for the reasons assigned by my hon'ble friend the mover."

His Honour THE LIEUTENANT-GOVERNOR said :—" I take no exception to the principle of the amendment, but I think there is a danger in it outside that to which the hon'ble member alluded. Is it not possible that waste land may come to mean in the eyes of the zamíndár fallow land intended for raiyati cultivation which is in the possession of the raiyat but has been allowed to remain fallow for a number of years ? I think the amendment should be safeguarded by the addition of some words or provision which would make it clear what waste land is, so that landlords should not trench on land which may have the appearance of waste land from not having been used for a long time but still belongs to the raiyat."

The Hon'ble SIR STEUART BAYLEY said :—" I very fully sympathise with the object which my hon'ble friend Mr. Hunter has in view. I myself threw out in Committee a suggestion somewhat to the same effect. I suggested that where the landlord had broken up waste land himself and cultivated it himself either directly or by the agency of hired servants for 12 years, then he should have it as *sír* or *khámár* land, and he would be in the same position as a raiyat who had done so. The objection which has been taken by His Honour the Lieutenant-Governor that land so reclaimed may simply be cultivated land which has remained fallow for some years, is of some force, and I shall be glad to guard against that by any *explanation* which may be approved by the Council, if any better form of words can be found. But I shall be sorry if the Council should reject the amendment altogether."

The Hon'ble MR. REYNOLDS said :—" Perhaps the hon'ble mover of the amendment will agree to the addition of an *explanation* to the following effect :—" that the breaking up of fallow lands for cultivation shall not be deemed to be reclamation of waste land under this section."

The Hon'ble MR. ILBERT said :—" The question of waste land has been considered ; the Courts will put the same construction upon it as they do under the waste land rules. I think the term ' waste land ' is enough."

The Hon'ble MR. HUNTER said :—“ My Lord, with reference to the remarks which have fallen from His Honour the Lieutenant-Governor, I beg to point out that if a definition of waste lands were necessary in this Bill, the necessity has not arisen under my amendment. If that necessity exists, it arises under the preceding clause (i) of the proviso, and indeed it would have also arisen at a much earlier stage in the Bill. The Courts must construe the real meaning of the words ‘ waste land ’ in my amendment, precisely as they must construe their meaning in the preceding sub-section and in a number of other Acts. But while I object to the meaning of the words being minimised with special reference to my amendment, I wish to state again, and with the utmost distinctness, that my amendment is intended to cover only the recalculation of *boná fide* waste land. I am sorry that I cannot accept my friend the Hon'ble Mr. Reynolds' picture of the happy condition of the reclaiming landlord under the present Bill. My hon'ble friend says that if the reclaiming landlord keeps the land in his own hands no occupancy-rights will accrue. But this Hon'ble Council well knows that landholders cannot keep large tracts in their own hands, for cultivation by hired labour ; that as a matter of fact they reclaim land not to cultivate it themselves but to let it out to tenants. Well, when a landlord lets out the land which he has himself reclaimed, what will happen under the provisions of this Bill ? If he lets it to a substantial settled raiyat, the tenant immediately obtains the complete occupancy-right. If the landlord lets it to a stranger, he takes the risk of getting a bad tenant ; but even then the tenant will have all the protection of a non-occupancy-raiyat, and the occupancy-right begins to accrue from the moment he enters on the land. It is delusive, under these circumstances, to speak of the reclaiming landlord as being sufficiently protected. I sincerely hope that the Council will accord to him the protection for which I now ask. I believe that it is in the interest alike of the landholder, the cultivator and the State that this protection should be granted.”

The amendment was put and agreed to.

The Hon'ble BĀBŪ PEĀRĪ MOHAN MUKERJI moved that the words “ or contract ” be substituted for the words after “ usage ” in section 182. He said :—“ The object of this amendment is to take homestead or building land out of the scope of the Bill, and to confine the regulation of the incidents of the tenancy of such land to custom and contract. The Bill is avowedly one for the regulation of the relations of landlord and tenant as regards agricultural and horticultural lands. It should not, therefore, concern itself with homesteads. I per-

1885.] [Bábú P. M. Mukerji ; Mr. Reynolds ; Sir S. Bayley.]

fectly agree to the principle that where the homestead forms part of an agricultural holding the provisions of the Bill should apply to it. But what justification can there be for bringing other building lands within the purview of the Bill? It is true that custom is saved with regard to such lands, but, as their incidents are usually governed by contract, great uncertainty will arise if contracts are ignored and the parties left to fight out the nature of a local custom in Court. The result of the provision will be that until the rights of parties are judicially determined, and until it is known whether a particular custom which has been set up by one of the parties is proved or disproved, they will remain in ignorance of their own rights. One of the most harmful effects of such a law will be the encouragement of flimsy and perishable constructions. It is desirable on all grounds that before a man builds a house to live in he should know the nature of the rights he has in the land, and nothing would secure this better than by giving free scope to contract, as at present, in such cases. The Council is well aware that on the motion of Lord Granville papers relating to tenures of building lands, containing much useful information regarding the practice of different countries, were placed on the table of the House of Lords, and they showed no fact more prominently than that unlimited freedom of contract exists in England in this respect, and that the great London proprietors are the best landlords in the world. All considerations, therefore, converge to show the necessity of giving free scope to contract in the matter of homesteads."

The Hon'ble MR. REYNOLDS said :—" I demur altogether to the remarks of the hon'ble member which implied that the section has anything to do with what are ordinarily known as building leases. This is merely a question of the homestead of the raiyat. The possession of a homestead is essential to his status as an agriculturist, and we have evidence in the papers before the Council to show that where a landlord has in some cases had the opportunity of putting pressure on a raiyat whom he has not been able to turn out of his holding but out of his homestead, the power has been abused by increasing the rent. The amendment will have the effect of defeating what is really a great part of the object of this section."

The Hon'ble SIR STEUART BAYLEY said :—" I cannot recommend the Council to accept the amendment. The hon'ble member's speech is calculated to lead the Council very far astray from the point which the Committee had before them. Nothing can be more entirely and wholly foreign to this section than the question of building leases such as those in London, extending it may be to 999 years. This section refers merely to the land on which the raiyat's house is built and which he holds in connection with his occupation as a raiyat, and in regard to which we find

in almost every district a different custom prevailing. In some districts he pays no rent ; in others he does. In some he acquires an occupancy-right at once ; in others the right grows up. In some districts he can be evicted from his agricultural holding without prejudice to his right in his homestead land ; in others he cannot. Then there are various customs as to what right he has in the materials of his house. There are different customs existing in almost all districts on points like this, and we found it impossible to frame any law which would not be unjust to one party or another, and it was in the face of these difficulties that the Select Committee decided that the matter should be left to be governed by custom. But where there is no custom which can be ascertained, we provide that it shall be governed by the rules which govern ordinary agricultural leases. If there is one means of pressure greater than another, it is by increasing the rent for homestead land—a power which the landlord can bring to bear when he cannot otherwise touch the raiyat in his agricultural holdings.”

The Hon'ble BĀBŪ PEĀRI MOHAN MUKERJI said :—“ The language of the section does not on the face of it support the view I have taken of the section. If hon'ble members will, however, read the definition of ' raiyat ' in section 5, subsection (2), they will find that, although land might originally have been taken for purposes of agriculture or horticulture, the descendant of the man who originally took the lease would still be deemed a raiyat, although he is a clerk in a Government office or a shopkeeper or a blacksmith. The definition of ' raiyat ' is very clear, and there is nothing irrelevant to the argument which I adduced as to the practice in regard to building leases in England ; and I think it will be in the interests of the the country generally that the change which I suggest should be made.”

The amendment was put and negatived.

The Hon'ble BĀBŪ PEĀRI MOHAN MUKERJI moved that section 186 be omitted. He said :—“ Hon'ble members will find that the provisions for penalties contained in this section are altogether one-sided. In the case of a landholder an *attempt* to distrain would be a criminal offence, but in the case of a raiyat an attempt to resist distraint or to remove distrained crops is no offence. This section is also objectionable on principle, on the ground that it converts into criminal offences acts which are otherwise not criminal. The Indian Penal Code is a complete and exhaustive Code in itself. Any attempt to supplement it by definitions of crime in respect of particular transactions which do not otherwise come within its scope, should be discouraged. If there be a criminal trespass let the offender be punished

1885.]

[*Bábú P. M. Mukerji ; Sir S. Bayley.*]

for it ; but why call that a criminal trespass which is in no sense a trespass ? Hon'ble members will also observe that the Bill nowhere provides a penalty for removal by the raiyat of crops stored for division or valuation under the dánábandí system."

The Hon'ble SIR STEUART BAYLEY said:—" I must request the Council to think once, twice and thrice before they accept this amendment. This question was one which was taken up by the Behar Committee, who said—

' By compelling Behar proprietors to adhere to the restrictions which the law imposes on distraint, you would practically deprive them of the only power of distraint which they care to exercise, namely, that of a private distraint or restraint of crops. It is, Mr. Gibbon thinks, better to do away altogether with a right which, if exercised according to the intention of the law, would be of little or no value, and which, not being exercised in accordance with law, has in the past, and may in the future, lead to great abuses. In these views a majority of the members concur.'

}. "Then with regard to the other acts, namely, preventing or attempting to prevent the reaping, gathering, storing or removing produce, I can only refer the hon'ble member to what Bábú Bimola Churn Bhuttacharji writes as to the system in Behar. He says—

§. ' The next engine of oppression in the hands of the zamíndár is not to make the dánábandí (appraisement of crops) at all, but to let the grain rot in the threshing-floor or in the field. When the raiyats decline to accept the zamíndár's terms as to the share of the produce the zamíndár declines to make the appraisement. One year's loss of rent is nothing to him (the zamíndár), but to the raiyat the loss of one year's crop means starvation. The grain is allowed to rot in the fields, or is eaten up by birds, unless the raiyats come round in time. Another mode of oppression is that after the dánábandí or agorabatti (appraisement or apportionment of the crops) has been made, the zamíndárs do not allow the raiyats to take away their grain.'

" These are the suggestions which we have incorporated in this section. Both the Behar Committee and the Rent Commission say it is real practical evil, and I can say from my own experience that in regard to the dánábandí the amount of damage has been very great, and there is always a difficulty in bringing the question to the decision of the Courts, because it is uncertain where the respective rights of the landlord and the raiyat to the possession of the crop begin and end, and it is therefore difficult for the Courts to say whether the landlord is actually doing an illegal act in stopping the raiyat in his right to reap the crop. These are the reasons which led the Select Committee to accept the section as it stands. The penalty is three months' imprisonment or a fine of Rs. 500, which is the same as the penalty for criminal trespass. The hon'ble member said the section was one-sided because

the landlord may be punished, but for doing these things the raiyat cannot be punished criminally. We have, however, provided a penalty for the raiyat who interferes with the appraisement or division of the crop in the shape of rent at the highest estimate of any neighbouring crop. It is because we hold that the ultimate proprietary right in the grain rests in the raiyat, that we do not punish him criminally for taking action in regard to it."

The amendment was put and negatived.

The Hon'ble BĀBŪ PEĀRI MOHAN MUKERJI moved that sections 191 and 192 be omitted. He said :—" The effect of section 191 will be to exempt a large majority of Government estates from the operation of the rule of twenty years' presumption. Government, while desiring to have their relations with their raiyats regulated by the same code of laws which regulated the transactions of private landlords, should not claim exemption from a rule which has worked so very injuriously to the interests of landholders. One hon'ble member remarked the other day that the presumption which the rule raised was incompatible with the very fact that the estate had never been permanently settled. But because the revenue of an estate had never been permanently settled it is no reason to suppose that there might not be numerous raiyati holdings in it the rents payable for which have never been altered. The periodical assessments of revenue which Government have made in their estates should have made them the more reluctant to claim an exceptional privilege in this respect, as nothing can be more easy for them than to prove variations of rent, if such variations have actually taken place. The exemption of Government estates, therefore, from the operation of this rule of presumption is highly objectionable. It will destroy rights and privileges of raiyats of Government estates which their fellows on the estates of private owners will continue to enjoy, and it will shake the confidence of the people in the scope and justice of a measure which provides one law for the raiyats of private owners and another for the raiyats of the State itself. For the very same reasons section 192 is very objectionable. While in the case of private property a contract fixing the rent of a holding at a certain figure will be in the interests of the raiyat binding on all future proprietors and purchasers, all contracts fixing rents at figures which a Revenue-officer may consider to be not fair and equitable for the time being will be in the interests of Government revokable at the will and pleasure of the Revenue-officer. The provision offers a striking contract to the restrictions imposed by the Bill upon freedom of contract. It violates the sanctity of contract to the injury of the raiyat and for the behoof of Government, while other provisions of the Bill will nullify contracts in the behoof of the raiyats and to the injury of private proprietors."

1885.] [*Mr. Quinton ; The Mahárajá of Durbhunga ; Mr. Reynolds ;
Sir S. Bayley.*]

The Hon'ble MR. QUINTON said :—“ This section really contains the law as it stands at present. My hon'ble friend on this and previous occasions has spoken on the assumption that tenants and raiyats under zamíndárs are in the same positions as those in temporarily-settled estates under Government. The Government, for wise purposes no doubt, has thought proper that the land-revenue, which is the most important item in the finances of the Government, should, in a great many provinces, be temporarily settled from time to time, and in making these settlements we must take into account how far the value of the land is divided between the tenant and the proprietor ; that is, the Government consents to give to the raiyats a part of the revenue. I think the arguments used by the hon'ble member do not in the least apply. There is no permanent settlement ; but if you say that, when a man's rent remains unchanged for twenty years, his rent cannot be raised, then it will be impossible for the Government to raise the revenue.”

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA said :—“ I do not wish to say anything, because I do not think any argument which I may bring forward will tend to persuade the Council to go against the decision to which the Government have already come.”

The Hon'ble MR. REYNOLDS said :—“ I feel some difficulty in attempting to answer the argument of the hon'ble mover of the amendment, because I have failed to connect his argument with the sections under consideration. I do not understand that this has anything to do with the twenty years' presumption where Government estates are concerned. The principle of the sections seems a fair one, and is specifically laid down in the Regulations, that the landlord cannot create an interest beyond the term to which his own interest extends. That seems to me to be the principle of these sections, and I fail to see that there is anything inequitable in it.”

The Hon'ble SIR STEUART BAYLEY said :—“ I think we have a right to complain of the repetition of the statement that the Government has made a separate law for Government estates from other estates. There is no such distinction in reality ; all temporarily-settled estates will be exactly in the same position, there is no distinction between the Government and any other proprietor, and the assertion that the Government has made a separate provision for their own estates is simply misleading. The rules to which the hon'ble gentleman objects will apply to all lands by whomsoever held in districts which are not permanently settled. The history of the matter is that it is a part of the existing law, which provides that

the temporary settlement-holder could not contract beyond the term of his own settlement ; a settlement-holder therefore cannot protect his raiyat against subsequent enhancement in case of the subsequent enhancement of the revenue. That is the law, and it is practically repeated in this section. Then we come to the question of the presumption from twenty years' holding at an unchanged rent. The presumption cannot possibly arise where the revenue, and presumably the rent, is being constantly changed. I do not think the question could be better stated than as it has been formulated by the Rent Commissioners' Bill. The *exception* to section 6 of that Bill says :—

' In the case of a tenure or under-tenure situate in an estate not permanently settled, such presumption shall not operate to prevent the enhancement of the rent of such tenure or under-tenure upon the expiry of a temporary settlement of the revenue, unless the right to hold such tenure or under-tenure for ever at a fixed rent has been expressly recognised in settlement proceedings by a Revenue-authority empowered by Government to make definitely or confirm settlements.'

" That is to say, where a person has held from the time of the Permanent Settlement there he has a right to go on holding at the same rent, but where you have the rent constantly changed the presumption does not naturally arise that he has held from the Permanent Settlement. It is no idea of our own."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—" As a matter of fact we know of several estates which have been permanently settled long after 1793. Still when a question under the rule of presumption arises it has been authoritatively held that the Permanent Settlement which is meant in this connection is to be taken as the Permanent Settlement of 1793. So that the argument which has been advanced by the Hon'ble Mr. Quinton on the ground that where there is no permanent settlement there can be no question of presumption falls to the ground. Where a temporarily-settled estate is in the hands of a farmer or other person in behalf of the Government, it is the Government that will derive the whole benefit of the enhancement that will take place in that estate ; therefore whether an estate is in the hands of the Government or a farmer, if it is not a permanently-settled estate it must for all intents and purposes be taken as an estate in which the Government is most beneficially interested. The justification for the existence of that section in the Bill is based on the argument that it finds a place in the Rent Commissioners' Bill, and the justification for section 192 is based on the fact that it is the existing law. If these arguments are allowed to prevail in the case of all sections that are contained in the Bill and which have been omitted from it, we shall have no cause for complaint."

The amendment was put and negatived.

1885.] [*Bábú P. M. Mukerji ; Mr. Ilbert ; Bábú P. M. Mukerji.*]

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that the words relating to Regulation VIII of 1793 in Schedule I be omitted. He said :—“ The sections of Regulation VIII which the Bill contemplates repealing are the very sections which regulate the relations of landlords and tenants. Next to the rules fixing the revenue in perpetuity, these sections form the most important rules of the Permanent Settlement. If the object of the present measure is ‘to restore the raiyats to their original position,’ as it is avowed to be by Her Majesty’s Secretary of State, nothing could be more incompatible with that object than a repeal of the sections in question. In the interests both of landlord and raiyat I think these sections should not be removed from the Statute-book.”

The Hon'ble MR. ILBERT said :—“ The first schedule merely contains, in accordance with our usual practice, those sections of the existing Regulations which will be superseded by the present legislation. The only effect of the hon'ble member’s amendment would be that the sections which he wishes to omit from the schedule would speedily find themselves included in a schedule to a Bill framed for the purposes of Statute-law revision. If my hon'ble friend will refer to the first volume of the Lower Provinces Code, he will find that my learned predecessor, who has done so much useful work in removing obsolete matter from the Indian Statute-book, has freely laid a sacrilegious hand on the Permanent Settlement Regulations. And if he were to turn to the English Statute-book he would find that the sacrilegious hands of Statute-law revisers have been laid on an enactment which is not less famous than the Permanent Settlement, on the enactment which appears in the authorized edition of the English Statutes as 25 Ed. I, caps. 1 and 29, but which is commonly known as Magna Charta.”

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in Schedule III, column 2, for the words “two years” the words “one year” be substituted. He said :—“ The present law is that when a raiyat has been dispossessed by a landlord he may sue to recover possession within one year from the date of dispossession. That is the ruling of the High Court, and its authority goes to remove any doubt in the wording of the law itself. The effect of substituting the period of two years for one year will be to allow independent rights to grow up in the mean time and thus to sow the seeds of litigation. I submit therefore that the present law should be maintained, and that by extending it to two years it will allow new rights to be created, and thus give rise to litigation and to very great complica-

[*Bábú P. M. Mukerji ; Sir S. Bayley ; Mr. Evans ; Sir S. Bayley ;* 11TH MARCH,
Bábú P. M. Mukerji ; Sir S. Bayley.]

tion as regards the determination of the title both of the person who has acquired rights and the person who has been ousted by the zamíndár."

The Hon'ble SIR STEUART BAYLEY said :—" The words as they stand in the schedule are in conformity with the policy of the Bill. It has been deliberately decided to legislate that a raiyat who is supposed to have abandoned his holding and has been treated as such might within a period of two years apply to the Court to reinstate him on payment of such costs as may seem fair and equitable ; it has been decided that two years is a better period than one year. We leave the occupancy-raiyat two years, a non-occupancy-raiyat six months, to apply to be reinstated in cases in which the abandonment may be found to be involuntary or incomplete."

The Hon'ble MR. EVANS said :—" I am informed that the hon'ble member will be ready to accept a similar wording in section 43 as in section 29. Casting my eye over the Bill I find that the alteration is necessary, inasmuch as a very large number of rent-engagements are not in writing."

The Hon'ble SIR STEUART BAYLEY said :—" I am prepared to put in section 43 words similar to those in section 29."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI, having accepted the proposal so made, by leave withdrew his amendment.

The Hon'ble SIR STEUART BAYLEY moved that the following proviso be added to section 43 :—

" Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed."

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY moved that in section 50, sub-section (1), before the word " holding " the words " tenure or " be inserted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 52, sub-section (1), clause (a), before the word " holding," in two places where it occurs, the words "tenure or " be inserted ;

that in the same sub-section, clause (b), before the word " holding," in two places where it occurs, the words " tenure or " be inserted ;

1885.]

[*Sir S. Bayley.*]

that in section 52, sub-section (2), clause (a), the words "tenure or" be inserted before the word "holding;" and

that in section 52, sub-section (4), before the word "holding," in the two places where it occurs, the words "tenure or" be inserted.

The amendments were put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 53, for the words "tenure-holder or raiyat" the word "tenant" be substituted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 61, sub-section (1), before the word "holding" the words "tenure or" be inserted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 89, before the word "holding" the words "tenure or" be inserted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 90, sub-section (2), clause (a), the words "tenure or" be inserted before the word "holding."

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 108, sub-sections (1) and (2), for the words "under the last foregoing section" the words "under this chapter" be substituted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in the proviso to section 108, the words "tenure or" be inserted before the word "holding" in the two places where it occurs, and the words "tenures or" be inserted before the word "holdings."

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 111, clause (b), for the word "local" the word "civil" be substituted.

The amendment was put and agreed to.

[*Sir S. Bayley.*]

[11TH MARCH,

The Hon'ble SIR STEUART BAYLEY also moved that in section 119, for the words and figures "sections 105, 106, 108 and 109" the following be substituted :—
"sections 105 to 109, both inclusive."

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also removed that in section 125, sub-section (3), for the words "on the outer door" the words "on a conspicuous part of the outside" be substituted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 134, sub-section (1), after the words "to be made" the words "from time to time" be inserted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 145, after the words "every such suit" the words "or application" be inserted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that to section 145 the words "or in which the application is made" be added.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 158, sub-section (1), the words "held by a tenant" be omitted ;

that after the words "the landlord or the tenant" the words "of the land" be inserted ;

that in clause (a) the words "held by the tenant" be omitted ;

that after clause (a) the following be inserted :—

"(b) the name and description of the tenant thereof (if any) ;"

and that clauses (b) and (c) of the same sub-section be lettered (c) and (d) respectively.

The amendments were put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in sub-section (1) of section 173, after the words "in execution of which a" the words "tenure or" be inserted ;

1885.]

[*Sir S. Bayley.*]

that in sub-section (2) of the same section, before the word "holding" the words "tenure or" be inserted; and

that in sub-section (3) of the same section, before the word "holding" the words "tenure or" be inserted.

The amendments were put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 174, sub-section (2), after the words "setting aside the sale" the following be added, namely:—

"and the provisions of section 315 of the Code of Civil Procedure shall apply in the case of a sale so set aside."

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 180, sub-section (1), clause (a), for the word "and" in the second place where it occurs the word "or" be substituted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that to section 185 the following be added, namely:—

"Subject to the provisions of this chapter, the provisions of the Indian Limitation Act, 1877, shall apply to all suits, appeals and applications mentioned in the last foregoing section."

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 190, sub-section (6), after the words "from time to time" the words "subject to the sanction (if any) required for making them" be inserted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 195 (e), for the words "which is not expressly repealed by this Act" the words "in so far as it relates to those tenures" be substituted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in the Form of Receipt in Schedule II, for the words "Raiyat's portion" the words "Tenant's portion,"

[*Sir S. Bayley; The Mahárájá of Durbhúnga.*] [11TH MARCH,

and for the words "Raiyat's part" the words "Tenant's part" be substituted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in Schedule III, Part III, the following words be added to clause 6, namely :—

"in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1877."

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that the Bill, as amended, be passed.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA said :—" We have now, my Lord, reached the final stage in the discussion of this Bill. Nothing that I can say will, I am aware, influence this Council in their determination to pass the Bill; but in justice to myself I feel bound to make one or two observations. I have opposed the Bill from the very first, because I considered it an impracticable, unfair and unworkable measure, and, viewing it in its final form, I am still of the same opinion. My hon'ble friend Bábú Peári Mohan Mukerji and myself, however, weak we may be in debate, have certainly one advantage over the majority of the members of this Council—in the practical experience that we possess of zamíndári management. I yield to no one in my desire to see the raiyats protected from oppression, but it is my deliberate opinion that this Bill will not accomplish this object; on the contrary, I believe that the legislative safeguards which you have provided, the constant intervention of Revenue-officers in all the details of agricultural life, will lead to the most widespread confusion, and will be as disastrous to the raiyats as to the zamíndárs themselves. My hon'ble friend and myself have endeavoured, to the best of our ability, to point out these dangers to the Council, but our proposed amendments have, almost without exception, been rejected; and the reasonable hopes that we have entertained in the moderation of the Council have been disappointed. I view with the deepest concern the outlook before us. I dread the passions and animosities which this legislation will kindle and inflame. We are embarking rashly on a sea of change, and many will be shipwrecked on the voyage. Such vast innovations cannot be introduced into the rural economy of the province without exciting great commotions. I can only hope that these anticipations may not be realised; but, whatever may be the result, I have, at any

1885.]

[*The Mahárájá of Durbhunga ; Mr. Evans.*]

rate, the satisfaction of feeling that I have acted as a true friend of my country and the Government in warning you of the political dangers which I believe underlie the proposed legislation."

The Hon'ble MR. EVANS said :—" I will not trouble the Council at any length at this stage. I agree with the majority of the Council that the main provisions of the Bill are beneficial. I think that the sections which give to occupancy-raiyats facilities in proving the status which they hold, the changes you have made in favour of landlords as regards the grounds of enhancement, and the provisions in regard to the preparation of a record-of-rights, thus preventing confusion and diminishing litigation, are all beneficial, and I think that the necessity for legislation has been clearly made out which would alone have justified any large change in the rent law which affects the well-being of so many millions. The task has been one of great difficulty, and our success cannot be more than partial. The Committee and the Council have done their best to perform the task which was forced on them, and I support the motion that the Bill as amended be passed. There are some minor points on which I hold a different opinion from the majority of the Council. And there is one point on which there is an irreconcilable difference between me and the majority, and that is the question of the limit on enhancement out of Court. I will not trouble the Council with any repetition of what I have said on this point, but I will point out that the effects will be this. It is perfectly certain that under this very law a large number of landlords will be entitled to enhancements at much higher rates than $12\frac{1}{2}$ per cent. ; and when a landlord has taken the raiyats of one village into Court and has established his right to enhance their rents 30, 40 or 50 per cent., the raiyats of the next village will say ' Don't take us into Court, but take an enhancement of 15, 20 or 25 per cent. and we will agree.' The Council have, for reasons which appear to me to be wholly insufficient, enacted that such contracts shall be void, although the raiyats may be convinced that it will be to their interest to consent to an enhancement of their rent to that extent. By this law the zamíndár is forced to take them into Court ; if he does not, the result is that, if he were to take kabúliyats by consent at 15 per cent. and then put his finger on their crops to realise the rent they have consented for their own advantage to pay, he will be liable to a fine of Rs. 200 for every such exaction, and for three years it is open to the raiyat to repudiate. I cannot believe that such a state of things is desirable. I am satisfied that the raiyat is the best judge of when it is to his advantage to keep out of Court. When a raiyat has amicably agreed with his landlord to an enhancement exceeding $12\frac{1}{2}$

[*Mr. Evans ; Bábu P. M. Mukerji.*]

[11TH MARCH,

per cent., I cannot think it right that the contract should be void. I think the provision is wholly unjustifiable and useless. There is therefore this difference between me and the majority of the Council. I should not however be justified in voting against the Bill, which, as I have said, I consider to be on the whole beneficial, on account of one of its provisions with regard to which I hold a different opinion from the majority of the Council. But I still hope that when the Act goes before him the Secretary of State will make his approval of the Act conditional on the repeal of this clause, or will strongly represent to the Executive Council the necessity of introducing a Bill for that purpose."

The Hon'ble BĀBŪ PEĀRI MOHAN MUKERJI said:—"Remote as is the expectation—remote beyond remoteness—of inducing your Lordship and this Hon'ble Council to agree to a direct negative of the present motion of the hon'ble member in charge of the Bengal Tenancy Bill, I deem it my duty to entreat your Lordship and this Hon'ble Council to pause before passing the Bill. It has been observed by a high authority, Jeremy Bentham, that 'the legislator is not the master of the disposition of the human heart; he is only their interpreter and their minister. The goodness of the laws depends upon their conformity to general expectation. The legislator ought to be well acquainted with the progress of this expectation in order to act in concert with it.' Allow me, my Lord, to ask has the Bengal Tenancy Bill satisfied the expectations either of the landholders or of the raiyats? The resolutions passed at meetings held in different parts of these provinces, the numerous memorials which have been submitted to your Lordship by landlords and raiyats alike, and the public opinion which has found expression in every section of the native and Anglo-Indian Press, give an emphatic negative to the query. The landholders stand aghast at the dreadful vista of unmerited and uncompensated loss of power and prestige, price and produce, which the measure threatens them with, trembling at the idea of the pains and penalties, the law-suits and litigation, of which they are to reap a plentiful crop, involving zamíndár and raiyat in one common ruin. Nor are the raiyats more appreciative of the benefits intended for them. They loudly express their consternation at the prospect of a law conceived with the best intention for their benefit, but which, they think, will actually make their position much worse than at present. My Lord, in the debates on the Bill my position was an embarrassing one—an existence on sufferance in a Council commanding and overwhelming majority against me, and counting amongst their number the ablest and most distinguished members of Her Majesty's Indian service. In spite of Your Lordship's very kind and reassuring expressions of appreciation of my position, the consciousness of overwhelming odds

1885.]

[*Bábú P. M. Mukerji ; Rao Saheb V. N. Mandlik.*]

against me never left me for a moment, creating a perpetual depression of spirit and subtracting much from my usefulness. Nevertheless, I endeavoured to show that the Bill ignores the original scope and object of an amendment of the Rent Law, that it is based on assumptions which are indignantly and vehemently denied by landholders, that some of its provisions make uncalled-for inroads upon vested rights of property, and others militate against conclusions arrived at after careful inquiries conducted under the paramount authority of the British Parliament, and that it is a measure eminently calculated to foment quarrels and disputes and to sow broadcast the seeds of litigation. I fully appreciate the desire of the hon'ble member in charge of the Bill that there should be a finality at some stage of these discussions, but the passing of a measure which is disliked by all classes connected with the land is not likely to allay the agitation which the discussions regarding it have given rise to. Let us not cry peace where there is no peace. Let us bear in mind that in the exercise of the legislative function in questions of such magnitude, complexity and importance, where every word and sentence we seek to clothe with the authority of law may be fraught with the gravest consequences to millions of unrepresented subjects of Her Gracious Majesty, it can never be unwise to pause and take a forecast of the future. The question which I would beg Your Lordship and this Hon'ble Council to consider is, whether it is desirable to pass without further inquiry and deliberation, a measure which it has been publicly said would shake the confidence of the people in the faith of the British nation, and which would set brooding over their wrongs a large and important section of the community who are noted for their loyalty and devotion to the British Crown. Should this Hon'ble Council decide upon passing the measure, I beg Your Lordship's permission still to express a hope that Your Excellency will be pleased to consider whether this is not properly one of the cases, contemplated by the Indian Councils Act, in which Your Excellency might reserve your assent for the signification of the pleasure of Her Gracious Majesty upon it."

The Hon'ble RAO SAHEB VISHYANATH NARAYAN MANDLIK said :—" I had no idea that we should be called upon to vote to-day for the passing of the Bill. After what has fallen from several hon'ble members in this Council in reference to the shaping of the measure in the Select Committee, and when, as the Hon'ble Mr. Reynolds once or twice remarked during the discussions in Council, that certain principles had been laid down in Committee which he thought were not to be departed from, I saw it was vain to hope that any radical change would be made on some points which in my opinion were clearly a departure from the law as it is

enunciated in the Acts of 1859 and 1869. In this contingency, and having carefully looked into the subject, I find the position is one the difficulty of which has been estimated by one of the learned Judges of the High Court, Mr. Field, in this sentence. He says :—‘We ought not to interfere with existing rights which have been the creations of our own administration operating upon the natural progress of the country.’ and he held that no case had ‘been made out for disturbing the landmarks of property.’ This remark applies, as far as I am concerned, to the position held by sub-raiyats and non-occupancy-raiyats. I do not think either of these classes fill any acknowledged position according to the customary law of India, and I do not except Bengal in making that statement. I speak subject to correction, but, having studied the land laws of nearly all the Provinces, I do say that both these classes of people are new creations. And I do not think a sufficient case has been made out for their being brought in in addition to the large and varied interests we have already got in Bengal. On the other hand, I think, having left the security of the raiyats in the shape of registered contracts, and having enacted the new sections 19, 29 and 43, we have let in a wide door, as I said when speaking to one of the sections, which we might have closed no doubt by inflicting a certain amount of hardship ; but that door would have protected a very large number of raiyats. And, on the other hand, we have for the first time enacted provisions with reference to the accrual of rights and the non-accrual of rights in places where no rights have ever existed, as in the case of waste lands ; and although the amendment which was carried to-day in reference to the reclamation of waste lands will give protection to a certain extent, I regret the Council should have hesitated in carrying through some provisions which would have been of very great assistance to the Government and have acted as a direct incentive to vast improvements in landed estates. I see no reason whatever, where no vested interests are concerned of any class of raiyats, why we should forbid people to enter into contracts which would have the protection of registration which I have referred to, and which, while serving the interests of both parties to the contract, will assist the progress the country.

“A good deal has been said in regard to the agitation in regard to this Bill. To both sides I would say that they ought now to apply themselves to the honest working of the provisions of the Bill which will be passed to-day. For myself I think the Bill will have an indirect effect in the promotion of litigation to an extent that I almost fear to contemplate. There is not a single provision, so far as I can see, in any of the larger departments of the Bill which leaves it to the

1885.]

[*Rao Saheb V. N. Mandlik ; Mr. Reynolds.*]

parties to settle their own interests by amicable agreement. This is a portion of the Bill which I have failed to understand. It is possible that, not knowing the details of the enhancement law and the law of contracts and possibly of other departments which have been amended by this Bill, I have not been able to follow one side or the other. But I have read the papers very carefully, and I think, and the district officers all think, that litigation will be the result. While, therefore, I shall not oppose the passing of the measure, I am sorry to say that I do not see how I can support it."

The Hon'ble MR. REYNOLDS said :—" Every member of this Council must be impressed with a sense of the responsibility which attaches to the vote he is about to give on this motion, and this applies with special force to those members who are more closely connected than the rest with those provinces to which the Bill will extend—the provinces of Bengal and Behar. For myself, I may be permitted to say that I approach the question with a deep feeling of this responsibility, a feeling proportioned to the magnitude of the interests at stake, and to my recognition of this Bill as the most important legislative measure undertaken by the Government since 1793. The experience of my official life enables me to appreciate the difficulty of the problem we have been called upon to solve. I am one of the few members of this Council who have tried rent-suits under the old Regulation of 1799 and under Act X of 1859. As Superintendent of Revenue Survey in the eastern districts I have been called upon to deal with the complicated system of land-tenure which prevails in that part of the country. I have been in executive charge of two districts which have been prominently noticed in the course of these debates,—the districts of Midnapur and Mymensingh,—and it has been my duty, as a member of the Board of Revenue, to superintend the administration of Government estates and of the properties under the charge of the Court of Wards. If my experience has taught me nothing else, it has at least taught me that the relations of landlord and tenant in those provinces present questions of a very difficult and complicated nature—questions covering a vast field, and demanding an intimate acquaintance both with the history of the past and with the circumstances of the present, but at the same time questions which are closely bound up with the national life, and which the statesmen and legislators of Bengal ought not to ignore or to put aside. If it would be presumptuous to hope for the enactment of a perfect rent law, it would be a faint-hearted neglect of duty to shrink from an attempt to frame the best law we can.

" To one who endeavours, in this spirit, to gather up the work of legislation from the point at which the authors of the Permanent Settlement concluded their

labours, it will probably appear that, while nothing fundamental requires to be changed, the altered conditions of the present day call for a different method of treatment from that which was thought sufficient in 1793. It is for us to prescribe definite rules where the legislators of that day were content to lay down broad general principles. Their Regulations were sometimes as much homilies as laws; and the real object of them is to be gathered rather from the opening preamble than from the sections which contain the specific enactments. To us, who can look at their legislation in the light of subsequent events, it is remarkable to observe how much they seem to have trusted to general declarations, to enunciations of the line of conduct which the Governor General in Council expected proprietors of land to pursue, and to a belief that such matters as were left undefined would be arranged by mutual forbearance and pacific agreement. We know now that some of their anticipations were signally falsified by the results. But they were careful to reserve to their successors, in clear and explicit terms, the power of further legislation; and the broad lines of their policy were so wise and equitable that it may safely be said that it will never be necessary for the Indian lawgiver to depart from, or tamper with, the principles which pervade the great settlement of Lord Cornwallis.

“ It, therefore, seems to me a great merit in this Bill that it aims at no other objects than those which the authors of the Permanent Settlement had in view. The particular means by which those objects are to be attained have varied, and may again vary hereafter, as the circumstances of the country change. What is necessary is not to subvert but to supplement the venerable law, to fill in its outlines, and to apply the spirit of its provisions to the remedy of evils which have grown up since its promulgation. The opponents of the Bill may fairly be challenged to point to a single section which contravenes this principle. The Bill is, indeed, little more than a modernized version of those Settlement Regulations which deal with the question of landlord and tenant; it translates the law of 1793 into the language of our own day, with such amplifications as experience has shown to be necessary to prevent its meaning from being misunderstood. I think that such considerations as these afford a conclusive answer to those who complain of this Bill as an infringement of the compact which Government made with the zamindars in 1793. What was guaranteed to them was, that their public assessment should be fixed for ever, and that they should enjoy exclusively the fruits of their own good management and industry. They were never promised that they should enjoy the fruits of the good management and industry of others. It may be

1885.]

[*Mr. Reynolds.*]

true that the Regulations of 1793 do not say a word about rights of occupancy or compensation for improvements ; but this is merely because the authors of the Permanent Settlement used a different language, not because their language bore a different meaning. It may be true that the legislators of 1793 laid great stress on the delivery of pattás, and that there is no corresponding provision in this Bill ; but this is because the object which they sought to attain by this means can now be more effectually secured by provisions of a different kind. I have dwelt at some length upon this topic, because in a matter in which the good faith of the Government has been challenged I think it desirable that the members of this Council should speak with no uncertain sound. I do not desire to detain the Council with a detailed review of the other objections which have been brought forward against the measure. I believe those objections admit of an answer equally complete and I welcome the Bill as an earnest and sincere attempt to deal with the questions in issue upon the subject.

“ It is an earnest and sincere attempt, but I fear it is nothing more than an attempt. I have already said in the course of this debate that I do not consider this Bill as a complete or wholly satisfactory measure. While I acknowledge the improvements which it introduces in the existing law, it seems to me to fail in giving that adequate protection to the raiyat which the authors of the Permanent Settlement reserved the right to give, and which, in my opinion, the circumstances of the country require should be given now. I believe that time will shortly bring these defects clearly to light, and will show the necessity for further legislation. The character of that legislation cannot be precisely indicated now. I feel some doubt as to the effect of the provision which confines the occupancy-right of the settled raiyat to the village. I think it probable that it will be found necessary to remove from the law all reference to the prevailing rate as a general ground of enhancement. But there are two questions in regard to which I feel no doubt that the provisions of the Bill are altogether inadequate, and that experience will show them to be so. These are the questions of the gross produce limit of rent, and of the status of the non-occupancy-raiyat. The provisions of the Bill will greatly stimulate and facilitate enhancements, and this not only where such enhancements might fairly be given, but in areas in which rents are already too high. The Behar raiyat, who is already paying a rackrent, will find himself exposed to a further claim on the ground of a rise in prices. The most effectual safeguard (the only safeguard, so far as I know, which has as yet been suggested) is the enactment of a rule which would limit the maximum rent to a fixed proportion of the produce in staple crops. The Council were possibly right in deciding that the evidence

before them did not justify the enactment of such a rule, but I cannot help regarding the omission of any such safeguard as a serious blemish. Then, with regard to the non-occupancy-raiyat, I admit that a landlord ought to have some power of choosing his tenants, but he should not be allowed to exercise it capriciously, or to use it as a mere engine for the extortion of a higher rent. The provisions which I believe will be found necessary for the non-occupancy-raiyat are briefly these—the initial lease should be for a period of not less than three years, and at the end of that term the landlord should be required to elect once for all whether he will evict the tenant or allow him to stay. If he determines to evict, he should be required to pay reasonable compensation. If he decides to let the tenant stay, the raiyat should have a right to hold for a further term of 10 years at a rent to be mutually agreed upon, or, in case of dispute, to be fixed by the Court. At the end of that term the raiyat would have acquired occupancy-rights, and would come under the provisions of the ordinary law. In these respects I look upon this Bill as seriously, perhaps dangerously, inadequate. But this need not prevent my supporting the motion that the Bill shall pass. If my apprehensions should be verified by the results of the working of the Bill, it can be supplemented by such further legislation as circumstances may show to be necessary. In the meantime I am contented to accept it as an instalment of what is required in order to put the relations of landlord and tenant in these provinces on a secure and permanent footing.”

The Hon'ble MR. HUNTER said:—“My Lord, I had not intended to say anything further at this stage. But a remark which has just fallen from the Hon'ble the Mahárájá of Durbhunga compels me, as a member of the Select Committee, to make one observation. The Hon'ble the Mahárájá has just told us that his ‘amendments have, almost without exception, been rejected.’ This is, perhaps, due in part to the circumstance that neither in the Select Committee nor in this Council have we had the advantage, with a few exceptions, of hearing the Hon'ble the Mahárájá's arguments in support of the amendments which stood in his name. Both in the Select Committee and in this Council special facilities have been given to his friend and my friend, the Hon'ble Peári Mohan Mukerji, to bring forward the Mahárájá's amendments in his absence. The Hon'ble Peári Mohan Mukerji largely availed himself of these facilities in the Select Committee, and I appeal to him whether he was not fairly and patiently listened to. But in this Council the Hon'ble Peári Mohan Mukerji has not seen fit to bring forward and support by argument the majority of the amendments standing in the Mahárájá's name. The result is that a number of the Mahárájá's amendments have been with-

1885.]

[*Mr. Hunter ; Mr. Amír Alí ; Mr. Gibbon.*]

drawn by the Mahárájá himself on the occasions when he was present, and a still larger number have not been put in his absence. It is, therefore, incorrect to say that the Hon'ble the Mahárájá's amendments have, with scarcely an exception, been lost. A great proportion of them have not come before the Council at all."

The Hon'ble MR. AMÍR ALÍ said :—" The issue involved in the present motion is one of such magnitude, fraught with such serious consequences for good or for evil to the agricultural classes in this province, that with all my desire not to inflict another speech on this Hon'ble Council I cannot record a mere silent vote. I have received many telegrams from the Mufassal asking me to urge on this Council the expediency of postponing the passing of this Bill. And it is, therefore, especially necessary I should explain my reasons for supporting the present motion. I have already stated that I entirely approve of the principles embodied in the Bill. I have objected to some of the main provisions on the ground that they either gave a very inadequate security to the classes for whose protection it was chiefly intended, or were likely to prove mischievous in their tendency to the raiyats. My strongest objection was to the ground of enhancement founded on the basis of increase in the prices of food-crops. I still maintain that this ground of enhancement will prove disastrous before long to the raiyats of Bengal and Behar. I had hoped that some of the objectionable features to which I ventured to refer would be removed before the final vote was taken. That has not happened. Still I do not feel I would be justified in withholding my vote from the present motion. The difficulties which are springing up on all sides in consequence of the tension of feeling between the classes chiefly interested in the passing of the measure make any further delay undesirable. Bearing in mind the powers reserved to the Local Government under section 196 to pass any enactment which the circumstances and exigencies of the moment may call for, I believe that this legislature has provided a sufficient remedy for the evils likely to arise under the provisions of the present Bill. Looking at the Bill from this point of view, I have not much hesitation in supporting the present motion. I regard it as a step in the right direction ; further experience will show its defects and shortcomings, its difficulties and dangers. I trust to the Bengal Government to remedy these defects the moment the necessity for doing so becomes urgent."

The Hon'ble MR. GIBBON said :—" I have no intention or wish to detain the Council with a long speech by entering into the merits of the Bill. But I believe the Bill is on the whole a good Bill, and will be beneficial in its opera-

[*Mr. Gibbon: The Lieutenant-Governor.*]

[11TH MARCH,

tion. There are, however, some sections of the Bill, but very few, on which I differed from the Select Committee; I had hoped that these sections would have been amended, but bow loyally to the decision of the Council with regard to them. The Bill will make great changes in the mode of transacting business, and it will take time to make them. I will only express the hope that the Government, after the Bill is passed, will see its way to making litigation cheaper and more within our means."

His Honour THE LIEUTENANT-GOVERNOR said:—"I can congratulate the Government of India, the Government of Bengal and the Province generally that this Bill has reached that stage at which from the acceptance of the motion now before the Council it will pass into law. It has been a labour of great research and toil for more than ten years. It has occupied the minds of men of different experience and of different opinions regarding the land-revenue system and landed tenures in Bengal; and in the consideration of which Natives and Europeans, officials and non-officials, zamíndárs and planters, and even the raiyáts themselves, have been represented. It has been computed that the papers connected with the discussion and passing of Act X of 1859 could be collected in a volume not larger than the one in my hand; and it is a matter of fact that the literature connected with the measure which we have now before us would fill the shelves of a moderately large sized library—so wide has been the enquiry, so extended the investigation and so general has been the public interest affecting the great problems at issue in this legislation. Again, I have seen it stated that the authorship of the Bill rests with several different persons. I have seen it attributed to the exalted nobleman, Lord Ripon, who has lately gone from among us; I have seen it attributed to the hon'ble member, Mr. Ilbert, at present in charge of the Legislative Department, to the Hon'ble Sir Steuart Bayley, and to myself, and to several other gentlemen both in and out of this Council. The fact, however, is that the origin of this measure goes much further back than that; and if any one cares to look into the earlier records on the subject he will find that the first warning note dates as far back as 1864, in the days of Lord Lawrence; and I believe that every Viceroy, and I am certain that every Lieutenant-Governor since that time, has had something to do with this large and important measure. Therefore, the contention which the Mahárájá of Durbhunga and Bábú Peári Mohan Mukerji have raised on the subject of inadequate consideration and imperfect examination of the Bill seems to me to be absolutely untenable. The Mahárájá of Durbhunga tells us that the Bill will be found to be impracticable, unfair and unworkable; that it will not protect raiyats, because the Revenue Courts will be constantly interfering; and he argues, and argues

1885.]

[*The Lieutenant-Governor.*]

apparently in all sincerity, that a condition of things which would leave the raiyats at the will of the zamindar is the only and best solution of the difficulties of the case. His contention apparently is that the self-interest of the parties concerned is the best security against all evils. Now I wish to point out that that great nobleman who looks down upon us in this Council Chamber from that picture with such a genial countenance, when he carried out the Permanent Settlement, was actuated with this very idea that the self-interest of the zamindars would always lead them to act with moderation and equity for the good of their raiyats and tenants. Proceeding on that principle he refused to entertain the proposals advocated by Sir John Shore and others of his advisers, that in carrying out a scheme for the settlement of the revenue he should endeavour also to legislate on the settlement of rents. His notion was that a Permanent Settlement with the zamindars would tend to the creation of a landed aristocracy throughout the country much in the circumstances of the English country gentleman, and that the self-interest of one in that position would clearly lead him to reside on his own estates, to extend cultivation, to expend capital on improvements, to settle the rents of his raiyats and to generally establish the rights of all classes of cultivators on his property; and thus to bring about all the benefits which self-interest induces. But what were the results? Certainly none of these anticipations were realised. Within a very few years of the passing of the Permanent Settlement law the preamble of Regulation VIII of 1819 shows us that the zamindars had become absentee proprietors and mere rent-receivers; they had abnegated all their rights and responsibilities as landholders; they had created tenures of all degrees—patnis, dar-patnis, se-patnis and the like, each in their turn permanent, heritable and transferable tenures; and at the end of this long string of intermediate holders came the unfortunate raiyats, by whose toil this whole intermediary system had to be supported. Thus the main object of Lord Cornwallis' Permanent Settlement was entirely lost. Then we come to Act X of 1859, which was the first serious attempt to break in on the rule of absolutism which the uncontrolled zamindari system had brought about. The legislation of that year was an earnest effort to secure to the raiyat the right of occupancy to which the common law of the country had entitled him before. A very few years after that law was passed the zamindars found a way to avoid the accrual of the occupancy-right, and with the help of the Courts they did avoid it; they shifted the raiyats from their lands to such a degree in all parts of the province that the Government had to take up seriously the necessity of legislating for the maintenance of the raiyats on their ancestral holdings. That was the origin of the present Bill, and in giving effect to it I do not see how it can be argued

The Lieutenant-Governor ; Sir S. Bayley.] [11TH MARCH,

that we are going out of our proper sphere of legislation ; the idea of leaving these two unequal parties to settle their affairs between themselves the experience of the past shows to be impossible. It may be that the passing of the Act will, for a time at least, create some uncertainty in the minds of men. But my hope is that, as power is given to the Local Government, with the sanction of the Governor General in Council, to fix the date on which the law is to be put into operation, a period of at least six months will be necessary for the framing of the rules which are required to be passed under the Act, and for the necessary preparation for its introduction. The best chance of the success of the measure will be the attitude of the zamíndárs towards it ; but I hope that they will soon realise the fact that their vested interests are not attacked in any degree, and that they owe a duty to the raiyats in respecting the rights which appertain to them."

The Hon'ble SIR STEUART BAYLEY said :— "My Lord, I shall not detain the Council long, but I have a few remarks to make in reply to some of the points raised by different hon'ble members in the course of this debate. I have found my position throughout the debate somewhat difficult, because I have had to answer two fires from entirely different directions, and now again on one side I am told that the measure is impracticable and unfair, that the Council have rejected reasonable proposals and modifications, and that the Bill is not in conformity with general expectation. On the other hand I am told that it is not adequate to give the protection which is required. It is a little difficult for me to answer by one set of considerations both these attacks from different points of view, and first I wish to refer to what has fallen from the hon'ble member opposite (Bábú Peári Mohan Mukerji), who has undertaken the burden of defending the interests of the zamíndárs, and has explained to the Council that he felt his existence here to be on sufferance, and suffered from the depression which such a position naturally causes. I can only say, speaking, I am sure, not only for myself, but for the Council generally, that having regard, both to the ability with which he has debated the question, the moderation, and yet the undaunted persistence with which he has upheld the zamíndárs' interests, the admirable patience and temper with which he has supported his own case, very frequently in a minority of one and deserted by all from whom he might have expected assistance, I can assure the hon'ble gentleman that I am sure the Council must consider all the zamíndárs' party could not have had an abler representative in this Council or one whose conduct of the debate could have so thoroughly won their respect. There is one point which he only touch-

1885.]

[Sir S. Bayley.]

ed, but which was specially brought forward on a previous occasion by the Hon'ble the Maharájá of Durbhunga, and which is perpetually repeated in the Press, to the effect that because only three members of the Select Committee signed the report without some reservation of special points, therefore the Bill has really the authority of only three members. This has been repeated so persistently, and is so likely to do harm when the facts are not properly understood, that I must, although the argument put forward is so unreasonable and unfair as to amount almost to an insult to the intelligence of the Council, ask your permission to say a few words in regard to it. The Committee consisted of more than half the members of this Council, and it included only two representatives of the Executive Council. Every Additional Member except the hon'ble member who represents Madras, the hon'ble member who represents Bombay, and one other hon'ble member who is not here to-day, was on the Committee; and the Executive Council, as I say, was represented only by Mr. Ibert and myself. Then, in addition to the fact that eleven out of the whole twenty members of this Council were on this Committee, which is a very unusual number for a Select Committee, and consequently necessitated considerable divergence of opinion, I would point out that we had altogether something over 60 sittings, and I have been through the notes of the Committee's proceedings, and I find that at each of these sittings on an average we decided from 15 to 18 motions. Thus we came to something over 1,000 decisions. Now, is it reasonable to suppose when 1,000 points are brought before a Committee on which there are 11 representatives, that there would be unanimity of opinion? Is it reasonable to suppose that because in various points we differed that therefore the majority were not in accord as to the main questions of this Bill being a just or right and proper measure? I think, if you will consider what the difficulties in the way were, how impossible it was to get agreement in all things, in the multitude of minute points that came before us, I think you will see how utterly unfair and unreasonable the argument is that because upon some points a good many of the members, having been in the minority, retained their opinion, therefore this Bill has not really the concurrence of the majority of the Committee. If it was so, I might add my name to the number of dissentients. I was in the minority on several occasions, but I should be very sorry that the fact should be held to bind me to the opinion that this is not a good Bill. Of course, as soon as the question came to the test of the voting, it was apparent that only two members of the whole Council wished to postpone the Bill, and the same two wished that it should not pass. All the rest were anxious that it should pass. Just as if all the gentlemen sitting here to-day had to prepare a *menu* for their dinner there would be no two exactly alike, but it would be very

unreasonable to say that they did not vote for having dinner at all. Or to take another illustration : if a train is going as far as Allahabad, some passengers might wish it were going further, others might wish it stopped a longer or shorter time at particular places, but yet all are very well content to go by it. In this case only two members wished that the train should not start at all. Such differences of opinion as these were the essential outcome of the Bill being exceedingly complicated, the Committee being exceedingly numerous, and having not only two extreme parties both strongly represented in it, but also of a very varied experience of different parts of the country being brought to bear upon the problems which were being discussed.

“ Then we are told the Bill is not in conformity with the general expectation. In one sense it is in conformity with the general expectation ; that is to say, I presume the general expectation was that this Council, under the presidency of His Excellency the Viceroy, would occupy a middle position, which it actually has occupied, and would as it were moderate between those who were extremely anxious for the zamíndár’s interests, and those who were extremely anxious for the victory of the raiyat’s interests. In that sense I claim that the Bill is in conformity with the general expectation. In another sense it certainly it not, because it is the resultant of two contrary forces which have brought about a Bill which goes in the direction of neither, but in the medium direction between the two.

“ Then we have been told that we have deserted the original scope of the Bill and what we laid down in our letter to the Secretary of State as the objects and intentions of the Bill. I think, if this statement is examined, it will not be found to be based on any accurate foundation. We have in the course of the discussion examined most of the points one by one in reference to which the assertion was made, and I think I might say that we have fairly maintained our position. It is perfectly true that a good many points which we laid down in our letter to the Secretary of State, and on which we intended to legislate, we have cut adrift ; but it was because we found the ship was over-weighted, or that they were points in themselves which could not be carried out. We have got rid of the right of transfer, and I do not presume that the hon’ble gentleman who charges us with having deserted our original position would make that a ground of objection. I maintain, however, that in regard to contract and all the other points of importance we have practically carried out what we proposed to the Secretary of State.

1885.]

[*Sir S. Bayley.*]

The real fact is that, after the very careful enquiry which was given when the question of revising the rent law was under discussion, it became impossible that any legislation should take a direction very materially different from what it has taken. I feel therefore that, however we might disagree, nobody who reads these papers can think that we are going back from the principles laid down by the Rent Commission. Their report is an elaborated one, and I do not think that we have departed far from the foundations which they laid, and on which the legislature was practically bound to build.

“ There are one or two other points on which I should like to make some remarks. One is the great danger which has been so much enforced on our attention of the spread of litigation. I have no doubt whatever that the Bill will cause litigation ; it would be worse than foolishness to argue that it will not. Act X of 1859 caused a great deal of litigation ; in fact, wherever you give or define rights you must cause litigation. So long as the raiyat is absolutely submissive to the zamíndár, and so long as he has no rights to enforce, and no Courts to enforce them in, so long will there be no litigation ; but when you find customary rights being questioned, being in the excitement of agitation supported on one side and weakened in the other ; when you find what my hon’ble friend opposite (Mr. Evans) called the moral rights of the raiyat existing in an abstract form, but impossible to prove in a concrete form, then if you attempt to define those rights and give the raiyat an opportunity of proving them, doubtless you must have litigation. The alternative of no litigation is to leave the raiyat entirely at the mercy of the opposite party—the party against whom he has his rights to enforce ; and that, I think, is a sufficient answer. Nobody wants litigation, but if the alternatives are to give the raiyat rights and enable him to enforce them, or to give him no rights at all, then I have no hesitation in saying we should willingly choose the former alternative. We are told that, as the outcome of this Bill, especially of the Settlement and Record chapter, every non-occupancy-raiyat will try and prove occupancy-rights, every occupancy-raiyat will try and prove a right to hold at fixed rates. But why is this ? Simply because at the present moment neither raiyat nor landlord knows what rights he has. There is no record that the Courts will accept, and all is left to hard swearing. The Benares Division is like the Behar Division permanently settled. Its population is the same, the tenures are the same, and the rights ought to be the same. If they are not, it is because in the one province they are properly recorded ; in the other they are not. Therefore I say that though the immediate result of this Bill will be a considerable increase of litigation, yet the result of it, and especially I refer to the Settlement chapter, which will, as His

Excellency has told you, be applied only experimentally to a single district in Behar, should undoubtedly be to give a definiteness and stability to rights that are now indefinite and unstable, and thus tend ultimately to a very great decrease in litigation.

“ I would now refer to the Hon’ble Mr. Hunter’s point about the pressure of the population on the soil, and the necessity for bringing tracts at present lying waste under cultivation. Looking at the question as he does from a philosophical point of view, from a deeper point of view than the particular provisions of this Bill, he says when you define a raiyat’s rights and how he is to enforce them, you have only done half your work. He says the question is a question between the productiveness of the soil and the pressure of the population on that soil, and in that view he has successfully urged in connection with this Bill a provision by which landlords should be encouraged to break up the soil and give more room for the increased production of food ; but going outside the Bill he also suggested a further measure—that of inquiring into the possibility of a large system of internal emigration. Now there is no doubt whatever that in various parts of Bengal and Assam there are enormous areas of waste land available, while on the other hand there is no doubt that in various parts of Behar and of Bengal there is very great pressure of population on the soil ; and if we can transfer the surplus population to these waste lands we shall do more to stave off famine than almost any other measure we can adopt. Now I find that at the present moment there are nine millions of acres in Assam of culturable soil available to anybody who chooses to ask for it, while in Behar there is a pressure of 800 souls per square mile ; and from that province some 30,000 persons migrate (not emigrate) annually into Eastern Bengal ; they cut the crops and come back to their homes. People naturally ask why these men undertake a long journey of about 200 miles and yet do not settle there. The fact remains that they do not settle down, and we have to deal with facts as we find them. Well the most obvious resource which occurs to every one is a system of State emigration. But I find that wherever attempts have been made by the State as a State to induce emigration, they have not resulted in a brilliant success. They have been attempted in Burma, in the Central Provinces and in the Doars, but I may be permitted to say that State emigration, so called, has been a failure. I was glad therefore to find that my hon’ble friend did not confine himself to a system of State emigration, that is to say, to emigration assisted by advances from the State which means not only State assistance and support, but also State supervision, State collections and State prosecutions. The fact is the people who are most

1885.]

[*Sir S. Bayley.*]

ready to take advances are the people who are least able to help themselves, least likely to work, least likely to repay them. The planter never looks to have his advances directly repaid. The Government must look to it, and yet cannot without discredit resort to the only measures which would effectually enforce it. As State emigration has not succeeded in the past, neither, I am persuaded, will it succeed in the future. But the Hon'ble Mr. Hunter has urged that private enterprise assisted by Government can do what the State working directly cannot do; and I can only say that, while the work is one which I think Government cannot do for itself, I quite agree with him that the State may well encourage private enterprise in this direction and be prepared to give assistance, and the Government will, I am sure, be glad to consider favourably any well digested project of this kind coming before them the initiative in which is taken by private enterprise.

“ I have only one word more to say. We have been warned in somewhat solemn terms of the very serious nature of the measure which we are now passing. We have been told what a heavy responsibility rests upon us. I am sure I may say, not only for myself, but for my colleagues who have been associated with me in the labours of the Select Committee, that while we have been working upon it for two years, giving to it our best time, thoughts and energies, we certainly felt the sense of responsibility in what we are doing to be very great. From the very beginning it has been by no means a light task, and it has been by no means with a light heart that we have undertaken it. We have had the energies of the two conflicting interests brought to bear upon us as a heavy burthen in some cases,— I will not say unduly brought to bear,—but we have had to support a good deal of painful criticism, both from old friends and outsiders. However, as was said by my hon'ble friend Mr. Reynolds, I think we may justly claim that what we have done is really an earnest and sincere attempt to carry out under a full sense of the responsibility the duty which the Council imposed upon the Committee two years ago. I do not venture to say that I believe in any Utopia which will be brought about by the operation of this Bill. It takes a very long time for the leaven of land legislation in India to leaven the whole lump of agricultural customs, modes of thought and ways of procedure. Moreover, as I have said already, I believe in the first instance it will lead to considerable litigation. But I do believe that when this agitation has gone down it will be found that we have really gone far to solve a most difficult problem in the way which is most just to the interests of the zamín:

dárs and the raiyats alike, and in a way which will certainly conduce to the stability of the country and in the future to the great lessening of litigation.”

His Excellency THE PRESIDENT said :—“ It is perhaps as well that I should say a few words before putting the motion. Sir Steuart Bayley, in his admirable speech, has explained so fully the views of the Government of India, and has anticipated so many of the points upon which I had felt inclined to touch, that there is but little for me to add. At the same time it is but fair to my colleagues that I should take this opportunity of saying how glad I have been to associate myself with them in the passing of this measure. It is true I have only come in time to take part in its recent stages, but I should be very unwilling on that account to withdraw in any degree from the full responsibility which rightly attaches to the head of the Government of India for any Act passed by this Legislative Council. Moreover, it must be remembered that before reaching Calcutta I was perfectly familiar with almost all the issues raised in this Bill. Similar discussions took place in reference to Act X of 1859 when I was Under Secretary of State for India ; and other circumstances have for some years past called my special attention to questions connected with land legislation. It was urged at that time that Act X of 1859 was an infringement of the Permanent Settlement ; but I was convinced then, as I am convinced now, and as the British and Indian Governments of that day and of this were and are convinced, that the ‘ permanency ’ of Lord Cornwallis’ settlement applied to the pledge given by His Excellency never to demand from the zamíndárs an increase of the assessment which at that date was imposed upon them ; but that, so far from any quality of permanency having been then officially impressed upon the relations subsisting between the zamíndárs and their raiyats, the Indian Administration of the day and the East India Company reserved to themselves in the most explicit and express manner the right of interfering in the interests and for the protection of the raiyats whenever circumstances might require them to do so. But I have no hesitation in adding that, even if no such reservation had been made by Lord Cornwallis and his colleagues, there would have remained an inherent and indefeasible right in the Government of India to enter upon legislation such as that we have undertaken as a matter of public policy, and in the interests of the community at large. I do not presume, however, to say that, in spite of my conscientious endeavours to master all the intricacies of the Bill, I have felt myself in a position to pass an authoritative opinion upon all the subordinate points which are involved in it. A great number of those points are of a technical character, and can only be properly decided by those who have a practical acquaintance with the agricultural conditions of the country.

1885.]

[*The President.*]

Again, there are some parts of the Bill to which I have assented with a fuller and more satisfactory conviction than to others, while there are some with regard to which I have subordinated my indefinite impressions to the opinions and authority of those who were more competent than myself to come to a decision upon them. It was impossible that this should have been otherwise ; but, taking the measure as a whole, I have no hesitation in saying, both with respect to its principles, its general features and its chief details, that the Bill as it stands has my hearty and sincere support. I believe with Mr. Reynolds that it is a translation and re-production in the language of the day of the spirit and essence of Lord Cornwallis' Settlement, that it is in harmony with his intentions, that it carries out his ideas, that it is calculated to ensure the results he aimed at, and that it is conceived in the same beneficent and generous spirit which actuated the original framers of the Regulations of 1793. Lord Cornwallis desired to relieve the zamíndárs from the worry and ruin occasioned by the capricious and frequent enhancements exacted from them by former Governments ; and it is evident from his language that he expected they would show the same consideration to their raiyats. I am happy to think that all of us assembled here to-day, no matter what our individual opinions upon various points of this measure may be, are actuated by the same honest and conscientious desire to do justice to each of the interests concerned, and to regulate their relations in such a manner as to secure the rights of the one and to respect those of the other. Nor is there one of us who would not have been ready to have submitted to any amount of additional labour or inconvenience, had there been any hope that by further discussion we could have arrived at a more satisfactory conclusion than that which we have reached.

“ These few observations are all that it is necessary for me to say on the Bill generally ; but there is one accusation which has been brought against the Government of India, and against its responsible head, so extraordinary and unfounded that it is right I should vindicate both myself and my colleagues in the matter. In consequence of a telegram which has been sent to England for the purpose of being used in Parliament, a statement is about to be made that the Viceroy of India has rushed this Bill with indecent haste through the Legislative Council, in order that he might hurry off to Simla. That statement ought never to have been made. So far from any haste or desire for haste having attended the passing of this measure, I would venture to remind the Council that independent of the long consideration it has received since it was introduced in 1882—I may say

ever since the letter of the Government of India was written in March, 1881—the most ample opportunity has been given to those interested on either side of stating their objections, and of bringing to the notice of the legislature any alterations they might have to suggest. After lengthy debates in Council upon its first introduction, it was referred to a Select Committee. There were 64 meetings of that Select Committee, each meeting lasting nearly four hours—periods which if added together would amount to 19 or 20 days of 12 hours each. At these discussions the representatives of the zamíndárs had the most ample opportunities given them of pressing their views upon their colleagues; and so far from their representations having failed to produce any effect, so far from the observation of an hon'ble member being true that amendments proceeding from the zamíndár's representatives always failed to meet with due consideration at the hands of the Committee, even since I myself have been in the country,—that is to say, within the last two or three months,—amendments of the most important kind, amendments which the zamíndárs represented as being vital to their interests, have been incorporated with the Bill. Amongst these amendments, I may mention the elimination of the word 'estate,' which gave to the clause in which it was found an operation so wide as to be very disadvantageous to the interests of the zamíndárs. The right of transfer which was found in the original Bill was also removed at the instance of the zamíndár party. It was agreed for the same reason that no limit should be placed upon the initial rent to be demanded from the non-occupancy-raiyat, that is to say, that there should be no interference with freedom of contract in respect of rent between the zamíndár and his ordinary tenant; for it will be observed that the Bill has been careful to discriminate between the ancient, customary and acknowledged rights of occupancy and its attendant incidents universally acknowledged to be inherent in the resident raiyat, and the unprivileged status of the non-occupancy-raiyat. Again, it was proposed in the original draft of the Bill to introduce a universal limit to rent, represented by one-fifth of the value of the gross produce. That limitation has been abolished. In the original Bill, fractional limitations were imposed upon enhancements in Court. These fractional limitations have disappeared. There was also a clause which nullified all contracts which had been entered into between the zamíndárs and their raiyats during the last twenty years. That clause was recognised as unjust, and has been excised. There was another chapter, giving to the non-occupancy-tenant compensation for disturbance on eviction. It was pleaded by the representatives of the zamíndárs that the introduction of a novel principle of the kind would work a great deal of injustice; and it was therefore dropped. In the chapter relating to agree-

1885.]

[*The President.*]

ments for enhancements out of Court, the representations of the zamíndárs have been taken into account, as far as circumstances permitted, and a subsidiary clause has been introduced with the object of redressing the hardships entailed by the hard-and-fast application of the 12 per cent. rule. Liberal reclamation clauses were also introduced in the interests of the zamíndárs; and no later than this morning a most important amendment, moved by the Hon'ble Mr. Hunter, was unanimously accepted by the Council in their anxiety to encourage the zamíndárs to improve their properties, and to relieve them of all unnecessary restrictions in dealing with any tracts of land they might themselves bring under cultivation. I do not say that in agreeing to these modifications we were actuated by any other motive than a desire to do equal justice between the two parties. We did not adopt these alterations in order to conciliate the zamíndárs, or by way of offering a compromise. That would not have been consistent with our duty to the raiyats; nor is it within the province of the Government of India to enter into compromises. The Government of India distributes justice, and that is what we have endeavoured to do in this Bill. We agreed to these concessions because we thought the demand for them was just; but I have mentioned the circumstance in order to rebut the assertion that the amendments introduced in the interests of the zamíndárs and by their representatives have been uniformly rejected or disparaged. I fear that the enumeration I have made of these modifications, which have told so largely in favour of the zamíndárs, will have renewed the pang felt by those of my hon'ble colleagues who were opposed to their being made, and who, so far from admitting that the zamíndárs have been hardly dealt with, contend, on the contrary, that this Bill still falls short of giving adequate protection to the raiyat. At all events, if there is one thing more obvious than another, it is this: that the Government of India has had to exercise a very severe watch over its conscience, in order to discriminate with justice and impartiality between the elaborate arguments advanced on either hand by the eloquent representatives of the zamíndár and raiyat seated at this Council Board. We have been told that we have undertaken a great responsibility in promoting a measure of this description. I should be the last person to deny the truth of the assertion. The measure is a momentous one, affecting vast interests, and calculated to produce far-reaching consequences; but I maintain that a far graver responsibility would have weighed upon those who, if their opposition had succeeded, would have stood between the occupancy-raiyat and those rights which every one acknowledges to be his, and which, every one is equally aware, but for this legislation he would have been in the greatest danger of losing."

BENGAL TENANCY[*The President.*][11TH MARCH, 1885.]

The Motion was put and agreed to.

The Council adjourned to Friday, the 13th March, 1885.

D. FITZPATRICK,
Secretary to the Govt. of India,
Legislative Department.

SIMLA ;
The 4th May, 1885.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 13th March, 1885.

P R E S E N T :

The Hon'ble J. Gibbs, C.S.I., C.I.E., *presiding*.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble Amir Ali.
The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.
The Hon'ble H. J. Reynolds.
The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.
The Hon'ble Peári Mohan Mukerji.
The Hon'ble H. St. A. Goodrich.
The Hon'ble J. W. Quinton.

PETROLEUM BILL, 1885.

The Hon'ble MR. GIBBS introduced the Bill to amend the Petroleum Act, 1881, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Ilbert, Sir S. Bayley and the Mover. He said:—"I have nothing to add to the remarks which I made when I obtained permission to introduce the Bill."

The Motion was put and agreed to.

The Hon'ble MR. GIBBS also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

INDIAN SECURITIES BILL, 1885.

The Hon'ble Sir A. COLVIN introduced the Bill to amend the law relating to Government Securities, and moved that it be referred to a Select Committee

LOCAL AUTHORITIES LOAN.

[Sir A. Colvin; Mr. Hope.] [13TH MARCH, 1885.]

consisting of the Hon'ble Messrs. Ilbert, Quinton and the Mover. He said;—
 "I have nothing at present to add to the remarks I made when I asked for leave to introduce the Bill, beyond saying that so much of it as makes provision for endorsement of securities by or to officials in their public capacity has been omitted from the Bill as it has now been drafted; it is believed that any difficulties which might arise in respect of this part of the matter may be sufficiently met by administrative arrangements."

The Motion was put and agreed to.

The Hon'ble Sir A. COLVIN also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

LOCAL AUTHORITIES LOAN BILL, 1885.

The Hon'ble MR. HOPE moved for leave to introduce a Bill to amend the Local Authorities Loan Act, 1879. He said:—"It is proposed to construct a light railway in the Tanjore District of the Madras Presidency by a Company, the interest upon the capital to be raised by the Company for the undertaking being guaranteed by the Local Funds Board of Tanjore. But section 8 of the Local Authorities Loan Act of 1879 prohibits any local authorities from charging the fund in any way except as provided in that Act and the rules thereunder, and the Act and the rules that may be made under it contemplate no other means of charging the fund than direct borrowing on their own securities. It is considered desirable therefore that the Act should be so amended as to enable the local legislature to pass any enactment that may be necessary for authorising these Local Funds Boards to guarantee the interest on the capital required for the construction of light railways, and for regulating the terms on which guarantees may be given."

The Motion was put and agreed to.

The Council adjourned *sine die*.

SIMLA;
 The 4th May, 1885;

D. FITZPATRICK,
 Secy. to the Government of India,
 Legislative Department.

Abstract of the Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at the Viceregal Lodge, Simla, on Thursday, the 14th May 1885.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G.,
G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of the Punjab, LL.D., K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.

LOCAL AUTHORITIES LOAN ACT, 1879, AMENDMENT BILL.

The Hon'ble MR. HOPE introduced the Bill to amend the Local Authorities Loan Act, 1879, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Ilbert, Sir S. Bayley and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. HOPE also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

LAHORE TRAMWAYS BILL, 1885.

The Hon'ble MR. ILBERT introduced the Bill to authorize the making, and to regulate the working, of Street Tramways in Lahore, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley, Mr. Hope and the Mover.

The Motion was put and agreed to.

[*Mr. Ilbert ; Sir A. Colvin ; Mr. Ilbert.*]

[14TH MAY,

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Punjab Government Gazette* in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

**TARIFF ACT, 1882, EXCISE ACT, 1881, AND BENGAL EXCISE ACT, 1878,
AMENDMENT BILL.**

The Hon'ble SIR A. COLVIN presented the Report of the Select Committee on the Bill to repeal part of section 6 of the Indian Tariff Act, 1882, and to amend the Excise Act, 1881, and the Bengal Excise Act, 1878.

MADRAS CIVIL COURTS ACT, 1873, AMENDMENT BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to amend the Madras Civil Courts Act, 1873. He said :—

“ The Government of Madras, on the recommendation of the High Court, has proposed that the Madras Civil Courts Act of 1873 should be so amended as to enable the Government to confer upon District Judges and District Munsifs the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the value of five hundred rupees, and to remove the doubt whether more than one Munsif can be appointed to exercise jurisdiction in the same local area. The object of the proposed Bill is to give effect to these proposals.”

The Motion was put and agreed to.

CENTRAL PROVINCES GOVERNMENT WARDS BILL, 1885.

→ The Hon'ble MR. ILBERT moved for leave to introduce a Bill to make better provision for the Superintendence of Government Wards in the Central Provinces. He said :—

“ At present the law upon this subject in the Central Provinces is in a very uncertain and unsatisfactory condition. The Judicial Commissioner has ruled that nothing calling itself a Court of Wards can be regarded as assuredly having legal existence in the Nagpur district. This ruling affects all the southern districts of the Provinces. Again, it has lately been discovered that there is no satisfactory ground for holding that the Bengal Regulations regarding the Court of Wards have been extended to the Nimar district ; and even in the northern districts, where

1885.]

[Mr. Ilbert.]

these Bengal Regulations are in force, the law is not on a satisfactory basis. There are doubts as to the powers possessed by the Courts, and there are a good many points on which it would be well for the Chief Commissioner to be in a position to issue clear and definite instructions to the authorities who have to administer the jurisdiction. The Chief Commissioner has now at his command, in the lately formed Agricultural Department, machinery available for the supervision of estates belonging to Government wards, and, this being so, he has urged that legislation on this subject should not be longer delayed. His suggestion is that legislation should take the form of a chapter which formed part of the Central Provinces Land-revenue Bill when it was originally introduced, but which was afterwards omitted from that Bill because it was considered inexpedient to complicate the measure by adding provisions which were not clearly and closely connected with the main subject-matter of the Bill. We have adopted this suggestion, and the Bill which I am asking for leave to introduce is based upon that omitted chapter, which has been revised and modified after very careful comparison with the law in force on the same subject in the Punjab, the North-Western Provinces, Oudh and Bengal."

The Motion was put and agreed to.

The Council adjourned to Thursday, the 28th May, 1885.

D. FITZPATRICK,
Secretary to the Govt. of India,
Legislative Department.

SIMLA ;
The 15th May 1885.

*Abstract of the Proceedings of the Council of the Governor-General of India,
assembled for the purpose of making Laws and Regulations under the
provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at Viceregal Lodge, Simla, on Wednesday, the 27th May 1885.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B.,
G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding.*

His Honour the Lieutenant-Governor of the Punjab, LL.D., K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.

TARIFF ACT, 1882, EXCISE ACT, 1881, BENGAL EXCISE ACT, 1878,
AND SEA CUSTOMS ACT, 1878, AMENDMENT BILL.

The Hon'ble SIR A. COLVIN moved that the Report of the Select Committee on the Bill to repeal part of section 6 of the Indian Tariff Act, 1882, and to amend the Excise Act, 1881, and the Bengal Excise Act, 1878, be taken into consideration. He said:—

“The Bill, as originally introduced, has been circulated for the opinions of Local Governments, who have all signified their agreement in it, and nothing further need be added to what was said on the introduction of the Bill in regard to its scope and aims. Advantage has been taken, however, of this opportunity to amend certain sections of the Sea Customs Act; the object of the amendments being two-fold. In the first place, under the Sea Customs Act, as it at present exists, country-distilled spirit intended for export must be taken from the distillery direct to the customs premises and there warehoused; and delay sometimes occurs before it can be exported, during which the manufacturer has to pay storage-duty. The object of the amendment of the sections (145 and 149) of the Sea Customs Act is to prepare the way for local legislation, having for its object the enabling the exporter to store the spirit in his own warehouses pending export.

“Section 207 of the Sea Customs Act has also been amended so as to include within its provisions other ports than those of Calcutta and Bombay; so that the facilities given to the Port Trusts of Calcutta and Bombay by that section may be extended to similar bodies in other places.”

The Motion was put and agreed to.

The Hon'ble SIR A. COLVIN also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

MADRAS CIVIL COURTS ACT, 1873, AMENDMENT BILL.

The Hon'ble MR. ILBERT introduced the Bill to amend the Madras Civil Courts Act, 1873, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley, Sir A. Colvin and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Fort St. George Gazette* in English, and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

CENTRAL PROVINCES GOVERNMENT WARDS BILL, 1885.

The Hon'ble MR. ILBERT also introduced the Bill to make better provision for the superintendence of Government Wards in the Central Provinces, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley, Mr. Hunter and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Central Provinces Gazette* in English, and in such other languages as the Local Administration thinks fit.

The Motion was put and agreed to.

1885.]

[*Mr. Ilbert.*]

REGISTRATION ACT, 1877, AMENDMENT BILL.

The Hon'ble MR. ILBERT also moved to introduce a Bill to amend the Registration Act (III of 1877). He said:—

“The main object of this Bill is to exempt from registration certain debentures issued by joint stock companies. The Council are doubtless aware—and a good many investors have learnt to their cost—that the term ‘debenture’ is applied by joint stock companies to forms of securities differing materially in their character. In some cases a debenture issued by a joint stock company is a mere acknowledgment of indebtedness, giving the holder no higher rights than those of an ordinary creditor. In other cases a debenture gives the holder a distinct charge or lien over specific property, and places him with reference to that property in the same position as a mortgagee. I need hardly say that the latter class of debenture constitutes a much better security than the former. The mode in which debentures of the latter class are issued varies, but the commonest, and perhaps the most satisfactory, mode of issuing them is this: the company executes a trust-deed making over property to certain trustees for the benefit of the debenture-holders, and then, having done this, it issues debentures referring more or less explicitly to the trust-deed, and giving the holders of the debentures the benefit of the provisions contained in that deed. But it appears that, owing to certain provisions in our Stamp and Registration Acts, the issue of debentures in this form is attended with a good deal of trouble and expense, and that in consequence of this much less use has been made of them than might otherwise have been expected. Under the Stamp Act, until recently, not only the principal trust-deed but each of the debentures separately was liable to stamp-duty. Then, under the Registration Act, if the trust-deed created a charge on immoveable property, it would be liable to registration, and the debentures also, inasmuch as they would refer to a security consisting of immoveable property, would probably be liable to registration. I say ‘probably’ because the point is not free from doubt; but I understand that in practice debentures of this class have usually been registered as a precautionary measure. Now, we think that it would be quite sufficient if the principal trust-deed only were made subject to stamp-duty and registration, and that the debentures, in so far as they are merely ancillary instruments to the deed, may be exempted. Accordingly, by a notification in the Financial Department last year, debentures of this class were exempted from stamp-duty, and what we now propose to do by the present Bill is to exempt these debentures from liability for registration also, assuming that they are so liable under

[*Mr. Ilbert.*]

[27TH MAY,

the existing law. The exemption will be carefully drawn, and is not intended to include any debentures except those which are strictly ancillary to the principal trust-deed and do not create a charge on any property other than such as is comprised in that deed. That is the main object of the Bill which I am asking leave to introduce. We also propose to embody in it two other amendments of the Registration Act, but they are amendments of very small importance, and I need not trouble the Council with an explanation of them. When speaking on the Transfer of Property Bill last year, I intimated that there were other points with respect to which the Registration Act would probably need amendment. Those points are still under consideration, and I think that it would be inadvisable to impede the progress of the present short and simple measure by introducing into it matter which would certainly give rise to a good deal of discussion."

The Motion was put and agreed to.

BURMA COURTS BILL, 1885.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to amend the Burma Courts Act, 1875, and section 360 of the Code of Civil Procedure. He said:—

"It is proposed by this Bill to relieve the Recorder of Rangoon of a certain class of business which, in his opinion and in the opinion of the Chief Commissioner, may be advantageously disposed of by other agencies. I am sorry to be compelled to trouble the Council with a Bill for amending the Burma Courts Act after so short an interval from the date of the last amending Act, and at a time when a larger measure for re-constituting the Burma Courts is under preparation; but I am not yet in a position to introduce this larger measure, and in the meantime it is really very important that we should adopt every available expedient for preventing the accumulation of arrears in the Recorder's Court. I shall therefore ask the Council to pass this Bill as a temporary measure of relief pending the enactment of the more comprehensive measure which I hope to be able to introduce at no distant date. Under the Burma Courts Act the Recorder of Rangoon exercises an insolvency jurisdiction not only in Rangoon but in Moulmein, Akyab and Bassein. The insolvency cases which occur in these towns are usually of a very petty character, and may just as well be disposed of by local agency. Accordingly we propose that the Chief Commissioner should be empowered to make orders vesting the insolvency jurisdiction exercised in these towns in their Civil Judge subject

[1885.

[*Mr. Ilbert.*]

to appeal to the Special Court at Rangoon. We also propose to enable the Chief Commissioner to transfer cases from the Court of the Recorder to the Court of the Judicial Commissioner at times when there is special pressure of work in the Recorder's Court. And lastly, we propose by the Bill to repeal a paragraph in the Civil Procedure Code which applies exclusively to the town of Rangoon, and which excludes the application of Chapter XX of that Code—the chapter relating to insolvency—from a certain class of debtors in the towns of Rangoon, Moulmein, Akyab and Bassein. The present Recorder of Rangoon has expressed his opinion that the distinction made by this paragraph between those four towns and other towns of British India is quite unnecessary, and is apt to cause hardship to judgment-debtors in certain cases, and therefore he recommends that we should repeal it."

The Motion was put and agreed to.

CARRIAGE OF PASSENGERS BY SEA BILL.

The Hon'ble MR. ILBERT also moved that the Hon'ble Sir S. Bayley be added to the Select Committee on the Bill to amend the law relating to the carriage of passengers by sea.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 10th June, 1885.

SIMLA:
The 29th May, 1885.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Viceregal Lodge, Simla, on Wednesday, the 10th June, 1885.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding.*

His Honour the Lieutenant-Governor of the Punjab, LL.D., K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

REGISTRATION ACT, 1877, AMENDMENT BILL.

The Hon'ble MR. ILBERT introduced the Bill to amend the Registration Act, 1877, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley, Mr. Hunter and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English, and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

BURMA COURTS BILL.

The Hon'ble MR. ILBERT also introduced the Bill to amend the Burma Courts Act, 1875, and section 360 of the Code of Civil Procedure, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley and the Mover, with instructions to report in one month. He said that he had suggested that the Committee be instructed to report in a month because he understood that the Chief Commissioner was anxious that the measure should

be brought into operation as speedily as possible, and, unless some instruction of this kind was given, the Committee could not, under the standing rules, report before the expiration of three months.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *British Burma Gazette* in English, and in such other languages as the Local Administration thinks fit.

The Motion was put and agreed to.

OUDH ESTATES ACT, 1869, AMENDMENT BILL.

The Hon'ble SIR STEUART BAYLEY moved that the Bill to amend the Oudh Estates Act, 1869, be taken into consideration. He said :—

“ This Bill was introduced into the Council by my hon'ble friend Mr. Quinton in October last, and it is owing to his absence that it has devolved upon me to proceed with it now.

“ It will be in the recollection of the Council that the grounds for making this alteration were explained by Mr. Quinton at the time. They were that under the Oudh Estates Act the taluqdárs have the power to make bequests of their estates under certain conditions by will when duly executed and registered. But the Registration Act provides two different processes. It provides for registration, which involves a copy of the document being kept, and also of its being kept open for inspection; and it provides for the simple deposit of a will in a sealed cover. Many of the Oudh taluqdárs were under the impression that depositing a will in a sealed cover was sufficient, and in a certain number of instances action has been taken on wills so deposited, and the property has passed accordingly into other hands; but in 1882 a case came before the Judicial Commissioner in which it was decided that the depositing of a will was not, within the meaning of the law, duly registering a will. The case went up to the Privy Council on appeal, and the decision of the Judicial Commissioner on the point was upheld, so that there can be no doubt as to how the law stands. The Lieutenant-Governor, Sir Alfred Lyall, pointed out to us the great inconvenience likely to arise from this decision, not only in regard to the past, because a certain number of properties had already changed hands, but also in regard to the future, because the taluqdárs would have to give publicity to their wills beforehand, the result of which would be to diminish the value and utility of their power of bequest; and it was in accordance with Sir Alfred Lyall's views that this legislation was undertaken. It will be

1885.]

[*Sir S. Bayley ; Mr. Ilbert.*]

seen that the law provides practically that wills so deposited shall be deemed to be duly registered, and that it operates absolutely in regard to the future and with certain limitations in regard to the past. Those limitations, as they stood in the Bill as introduced, were that the law should not interfere with any decree passed or any suit instituted before the introduction of the Bill.

“The Bill was sent to the Local Government, and by them was referred to the Taluqdárs Association of Oudh; and it is in accordance with the wishes of the Association and the Lieutenant-Governor that the first Motion for amendment which stands in my name is proposed.

“That Motion merely alters the limitation to this effect, that, instead of saving decrees passed before the introduction of this Bill, we save all decrees passed before the passing of this Act. The Bill in its present shape has the approval of the Lieutenant-Governor and the taluqdárs, who are the persons principally concerned.

“The second Motion for amendment which stands in my name has for its object merely to make the meaning of the clause clearer.”

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 2 (a), for the words “twenty-third day of October, 1884,” the words “passing of this Act” be substituted.

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 2 (b), after the word “is” the words “at the time of the passing of this Act” be inserted.

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble MR. ILBERT moved that the Hon'ble Sir S. Bayley and the Hon'ble Mr. Hunter be added to the Select Committee on the Bill to amend and define the law of Testamentary and Intestate Succession to Khojás.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Hon'ble Sir S. Bayley be added to the Select Committee on the Bill to amend section 265 of the Indian Contract Act, 1872.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 24th June, 1885.

D. FITZPATRICK,

Secretary to the Government of India,

Legislative Department.

SIMLA;

The 19th June, 1885. }

*Abstract of the Proceedings of the Council of the Governor General of India,
assembled for the purpose of making Laws and Regulations under the
provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at the Viceregal Lodge, Simla, on Wednesday, the 8th July,
1885.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B.,
G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of the Punjab, LL.D., K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

BURMA MUNICIPAL ACT, 1884, AMENDMENT BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to correct
an error in the Burma Municipal Act, 1884. He said:—

“The Chief Commissioner has recently pointed out that the language of
one of the rating clauses in the Burma Municipal Act is inconsistent with the
proposals which he had previously submitted on the subject, and with some of
the other provisions of the Act, and is likely to cause practical difficulties, and
he suggested that the language of the clause might possibly be due to a mistake.
On looking through the papers connected with the measure I find that,
through a mere oversight, the word ‘occupation’ was substituted for the word
‘possession’. It is quite clear from the papers that the substitution was
accidental, and not intentional, and that it may be fairly treated as a
mere error. Under these circumstances, and as it is important that the
error should be corrected as soon as possible, I have no hesitation in asking
Your Excellency to suspend the Rules for the Conduct of Business, in order
that the Bill may be passed without further delay.”

The Motion was put and agreed to.

The Hon'ble MR. ILBERT then introduced the Bill.

[*Mr. Ilbert; The President; Mr. Hope.*] [8TH JULY, 1885.]

The Hon'ble MR. ILBERT having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

THE PRESIDENT declared the Rules suspended.

The Hon'ble MR. ILBERT then moved that the Bill be taken into consideration and passed.

The Motion was put and agreed to.

SEA PASSENGERS BILL, 1885.

The Hon'ble MR. ILBERT presented the Report of the Select Committee on the Bill to amend the law relating to the carriage of passengers by sea.

TELEGRAPH BILL, 1885.

The Hon'ble MR. HOPE presented the Report of the Select Committee on the Bill to facilitate the construction of Telegraphs and to amend the Indian Telegraph Act, 1876.

CRIMINAL PROCEDURE CODE, 1882, BOMBAY DISTRICT POLICE ACT, 1867, PENAL CODE AND PRISONERS' ACT, 1871, AMENDMENT BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to amend the Code of Criminal Procedure, 1882, the Bombay District Police Act, 1867, the Indian Penal Code and the Prisoners' Act, 1871. He said:—

“The title of this Bill is a little formidable, but the truth is that it is what would be called in England an *omnibus* Bill. It is drawn on instructions from the Home Department, and it makes a number of amendments on very minor points, the necessity for which has been, from time to time, pointed out in sundry office-notes. There is not one of the amendments which touches any matter of serious importance, or which, so far as I can judge, is likely to give rise to any discussion. The reasons for each amendment are fully explained in the Statement of Objects and Reasons appended to the Bill; and under these circumstances I do not think I need trouble the Council by any further explanation of the proposals which the Bill embodies.”

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 22nd July, 1885.

SIMLA;
The 10th July, 1885. }

D. FITZPATRICK,
*Secretary to the Government of India,
Legislative Department.*

*Abstract of the Proceedings of the Council of the Governor General of India,
assembled for the purpose of making Laws and Regulations under the
provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at the Viceregal Lodge, Simla, on Wednesday, the 22nd July,
1885.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, K. P., G.C.B.,
G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of the Punjab, LL.D., K.C.S.I., C.I.E.,

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.,

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

CENTRAL PROVINCES COURTS BILL, 1885.

The Hon'ble Mr. ILBERT moved for leave to introduce a Bill to amend
the Law relating to Civil Courts in the Central Provinces. He said :—

“ Mr. Crosthwaite the Chief Commissioner of the Central Provinces, has
been for some time engaged in working out a scheme for the judicial re-organ-
ization of the provinces under his administration, with the object, among
other things, of effecting gradually, and as circumstances permit, that
separation between executive and judicial functions which it is our desire to
introduce everywhere, but which is only possible to a very limited extent in
the more backward provinces of the Empire. It appears that the result of
the arrangements now in force in the Central Provinces is that the Tahsildar
who is both a Revenue-officer and also the officer who presides over the lowest
Courts of civil jurisdiction, is very much overburdened with original civil
work, and that the Deputy Commissioners and Commissioners, who also com-
bine executive with judicial functions, are overburdened with appellate civil
work ; and the problem which Mr. Crosthwaite is trying to solve is how to
afford to these three classes of officers that amount of relief which will enable
them to devote proper attention to their other duties. We propose to give
this relief partly by taking power to appoint officers who are to be styled

Judicial Assistants to the Commissioner, Subordinate Judges and Munsifs, and who are to take over the whole, or part, of the civil judicial work of the Commissioners, Deputy Commissioners and Tahsildars respectively. These officers are, as I understand, only to be appointed where, and for so long as, they are absolutely needed, and nothing like a uniform or final arrangement is to be attempted throughout the whole of the aggregate districts, the circumstances of which differ so materially from each other and all of which are passing somewhat rapidly through a period of transition.

“Then Mr. Crosthwaite also proposes to make some modification in the system of appeal, which, as we all know, constitutes the crux of all our judicial arrangements. Under the existing Act for the Central Provinces, the course of appeal is regulated exclusively by the powers of the officer from whom the appeal lies. Consequently, when it is necessary to transfer certain sets of appeals from one appellate tribunal to another, the Chief Commissioner is obliged to resort to the clumsy device of increasing or reducing the powers of the officer presiding over the Court from which the appeal lies, without reference to his fitness for exercising those powers, merely in order to change the Court of appeal, and with the result that all the cases decided by that officer must necessarily go on appeal to the same Court, no matter what their intrinsic value or importance may be. It is now proposed to regulate the course of appeal by reference to the nature of the subject-matter in dispute, in accordance with the system which prevails in Bengal and other Provinces. Mr. Crosthwaite finds that most of his proposals can be carried into effect by executive order, and without any alteration of the law, but that there are some provisions of the Central Provinces Courts Act, especially those relating to appeals, which it is absolutely necessary to modify. Those provisions are not very numerous, but Mr. Crosthwaite is of opinion—and I entirely agree with him—that it would be desirable to take this opportunity of re-casting the language and arrangement of the Civil Courts Act for the Central Provinces in order to bring them into closer conformity with more recent Acts of the same nature in force in other Provinces. Accordingly we propose to repeal the Act of 1865 and to re-enact it with the necessary modifications.”

The Motion was put and agreed to.

**CRIMINAL PROCEDURE CODE, 1882, BOMBAY DISTRICT POLICE
ACT, 1867, PENAL CODE AND PRISONERS' ACT, 1871,
AMENDMENT BILL.**

The Hon'ble Mr. ILBERT also introduced the Bill to amend the Code of Criminal Procedure, 1882, the Bombay District Police Act, 1867, the Indian

Penal Code and the Prisoners' Act, 1871, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir S. C. Bayley, Mr. Hunter and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

SEA PASSENGERS' BILL, 1885.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to amend the law relating to the carriage of passengers by sea be taken into consideration. He said:—

“This Bill applies to voyages from Indian ports certain provisions for the relief of shipwrecked and distressed emigrants which are embodied in two English Acts of Parliament. We have received from the Chambers of Commerce and other authorities whom we have consulted various suggestions for the amendment of the proposals embodied in our Bill; but in almost every case we have found that those suggestions are inadmissible, for the simple reason that the special authority under which we are legislating in this particular case merely enables us to apply the provisions of the English Acts and does not empower us to amend them. Under these circumstances, the only alterations which we have been able to make in the Bill as introduced are such as are strictly warranted by the language of the English Acts. For instance, we have gone as far as is practicable in meeting the suggestion of the Madras Chamber of Commerce by inserting in the Bill a provision expressly legalising insurances against the liabilities imposed upon shipowners by the Bill, and we are able to do this because that provision is simply copied from a section of one of the English Passenger Acts. We have also, at the instance of General Blair, the Resident at Aden, made the Bill apply to voyages to ports on the East Coast of Africa and in the Gulf of Aden; but we have taken care in all the alterations that we have made not to go beyond the four corners of the English Acts of Parliament which we are authorised to apply.”

The Motion was put and agreed to.

[*Mr. Ilbert; Mr. Hope.*]

[24TH JULY,

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

INDIAN TELEGRAPH BILL, 1885.

The Hon'ble MR. HOPE moved that the Report of the Select Committee on the Bill to facilitate the construction of Telegraphs, and to amend the Indian Telegraph Act, 1876, be taken into consideration. He said :—

“In making this Motion I think that there are only two points to which it is necessary for me to invite the attention of the Council, all minor ones having been fully explained in the Report of the Select Committee. The first point is that we have provided that the words “telegraph authority” in the Bill shall mean the Government Telegraph Department, and that that authority shall not exercise the power of placing telegraph lines and posts except for the purposes of a telegraph established or maintained by the Government, or to be so established or maintained. We think that most of the objections that were taken to the Bill as introduced, chiefly by commercial bodies in Calcutta, will have been met by our proposal that the power of placing telegraph lines and posts shall only be exercised by the Government Telegraph Department. The exercising of such powers by licensees was, on consideration, admitted to be decidedly open to objection.

“The other point is that, in endeavouring to make this Bill fit in with the existing Telegraph Act, we came to the conclusion that it would be more convenient to the Telegraph Department and to the public that the existing Act should be repealed and re-enacted with the modifications and additions proposed by the present Bill; and we have accordingly re-drawn the Bill as a consolidating measure.”

The Motion was put and agreed to.

The Hon'ble MR. HOPE moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

BURMA COURTS BILL, 1885.

The Hon'ble MR. ILBERT presented the Report of the Select Committee on the Bill to amend the Burma Courts Act, 1875, and section 360 of the Code of Civil Procedure.

1885.]

[*Sir A. Colvin.*]

INDIAN SECURITIES BILL, 1885.

The Hon'ble SIR A. COLVIN asked for leave to postpone the presentation of the Report of the Select Committee on the Bill to amend the law relating to Government Securities.

Leave was granted.

The Council adjourned to Wednesday, the 29th July, 1885.

D. FITZPATRICK,

Secretary to the Government of India,

Legislative Department.

SIMLA;

The 24th July, 1885. }

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at the Viceregal Lodge, Simla, on Wednesday, the 29th July 1885.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding.*

His Honour the Lieutenant-Governor of the Punjab, LL.D., K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

CENTRAL PROVINCES CIVIL COURTS BILL, 1885.

The Hon'ble MR. ILBERT introduced the Bill to amend the Law relating to Civil Courts in the Central Provinces, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir S. C. Bayley, the Hon'ble Mr. Hunter and the Mover, with instructions to report within two months.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Central Provinces Gazette* in English and in such other languages as the Local Administration thinks fit.

The Motion was put and agreed to.

BURMA COURTS BILL, 1885.

The Hon'ble MR. ILBERT also moved that the Report of the Select Committee on the Bill to amend the Burma Courts Act, 1875, and section 360 of the Code of Civil Procedure, be taken into consideration. He explained that the Report was a very short one, and merely stated that the Bill as introduced had been approved by the local authorities and consequently did not call for any modification.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill be passed.

The Motion was put and agreed to.

NORTHERN INDIA FERRIES ACT, 1878, AMENDMENT BILL.

The Hon'ble MR. HOPE moved for leave to introduce a Bill to amend the Northern India Ferries Act, 1878. He said :—

“ The object of this Bill is to remedy a defect which may almost be described as one of drafting and nothing more, and which experience has brought to light. In section 3 of the present Ferries Act XVII of 1878, the word ‘ ferry ’ is defined as including a bridge-of-boats and other things ; but by some accident section 13 provides that ‘ no person shall, except with the sanction of the officer charged with the superintendence of a public ferry, keep a ferry-boat for the purpose of plying for hire to or from any point within a distance of two miles from the limits of such public ferry ’ ; and section 26 imposes a penalty for contravening section 13. The result of this is that, although the definition of ‘ ferry ’ is perfectly correct, the penalty clause is only applied to a person who plies a ferry-boat without a license, and it has been found that individuals are sufficiently ingenious to make a bridge-of-boats within the limits of a public ferry and that they cannot be touched in any way. This defect it is now proposed to remedy ; the proposed amendment is undoubtedly in accordance with the intention of the original Act.

“ I may here mention a small matter which we intend to take this opportunity of providing for ; that is, we propose to take power for leases being given by or with the sanction of the local authorities, otherwise than by public auction and for long terms. This is necessary in order to meet the case of ferries leased to Railway Companies on special agreements for long terms.”

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 5th August, 1885.

D. FITZPATRICK,
Secretary to the Govt. of India,
Legislative Department.

SIMLA ;
The 31st July, 1885.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at the Viceregal Lodge, Simla, on Wednesday, the 12th August, 1885.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding.*

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble W. W. Hunter, C.S.I., C.I.E.

NORTHERN INDIA FERRIES ACT, 1878, AMENDMENT BILL.

The Hon'ble MR. HOPE introduced the Bill to amend the Northern India Ferries Act, 1878, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Ilbert and Hunter and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. HOPE also moved that the Bill and Statement of Objects and Reasons be published in the *Punjab Government Gazette*, the *North-Western Provinces and Oudh Government Gazette*, and the *Central Provinces and Assam Gazettes*, in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 26th August, 1885.

D. FITZPATRICK,
*Secretary to the Govt. of India,
Legislative Department.*

SIMLA ;
The 13th August, 1885.

NOTE.—The Meeting fixed for the 5th August, 1885, was subsequently postponed to the 12th idem.

S. G. P. I.—No. 453 L. D.—6-5-12—50—P. J. M.

*Abstract of the Proceedings of the Council of the Governor General of India,
assembled for the purpose of making Laws and Regulations under the
provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at the Viceregal Lodge, Simla, on Wednesday, the 23rd
September, 1885.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B.,
G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of the Punjab, LL.D., K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

LAND ACQUISITION (MINES) BILL, 1885.

The Hon'ble MR. HOPE presented the Report of the Select Committee on
the Bill to provide for cases in which Mines or Minerals are situate under
land which it is desired to acquire under the Land Acquisition Act, 1870

LOCAL AUTHORITIES LOAN ACT, 1879, AMENDMENT BILL.

The Hon'ble MR. HOPE also presented the Report of the Select Committee
on the Bill to amend the Local Authorities Loan Act, 1879.

CENTRAL PROVINCES CIVIL COURTS BILL, 1885.

The Hon'ble MR. ILBERT presented the Report of the Select Committee
on the Bill to amend the Law relating to Civil Courts in the Central Provinces.

The Council adjourned to Thursday, the 1st October, 1885.

D. FITZPATRICK,

Secretary to the Government of India,

Legislative Department.

SIMLA;
The 25th September, 1885. }

Note.—The Meeting fixed for the 26th August, 1885, was subsequently postponed
to the 23rd September, 1885.

*Abstract of the Proceedings of the Council of the Governor General of India,
assembled for the purpose of making Laws and Regulations under the
provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at the Viceregal Lodge, Simla, on Friday, the 2nd October,
1885.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B.,
G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

The Hon'ble Amír Alí.

LOCAL AUTHORITIES LOAN ACT, 1879, AMENDMENT BILL, 1885.

The Hon'ble MR. HOPE moved that the Report of the Select Committee on the Bill to amend the Local Authorities Loan Act, 1879, be taken into consideration. He said :—

“ In March last, when I had the honour to move for leave to introduce the Bill to amend the Local Authorities Loan Act of 1879, I mentioned that a certain small local railway was required in the district of Tanjore, in the Madras Presidency, and that the proposal was that it should be constructed by a company, the interest upon the capital to be raised by the company being guaranteed by the Local Funds Board of Tanjore. At the same time I added that we considered that there was a legal difficulty in the way of the Board giving this guarantee, which existed in the general Local Authorities Loan Act of 1879, and that we thought that it would be better to amend that general Act in the first place, without any specific provision for Tanjore in particular. The Bill is an extremely simple one, as the Council will perceive, and I trust that the Council will accede to the Motion which stands in my name that it be passed to-day. It will be seen, however, from the Bill that, before it can take effect anywhere, a

[*Mr. Hope.*]

[2ND OCTOBER,

further special enactment is required. Such an enactment will, in the case of Local Governments possessing them, be one to be passed by their own legislatures—and by the legislature of the Madras Presidency in the first instance—if they should think it necessary. In the case of other Governments who do not possess legislatures, such as the North-Western Provinces and the Punjab, any enactment of this kind that might be required would have to be passed in our own Council, and it would probably take the form of amendment of some of the existing local Acts, such as the Municipalities or Local Boards Acts, applying to particular Provinces. The present case arises, as I have already said, out of the needs of the district of Tanjore, and those needs, as regards Tanjore, will no doubt be provided for by local legislation; but along with the Tanjore case it was brought to our notice that there were several other localities which would be very much benefited by a similar arrangement. The Tanjore case was put forward as a sort of test case, but other branch lines will probably be deemed by the Madras Government to be of importance also, and in that case it will be for them to consider whether they will make their Act general for all Local Boards in the Madras Presidency. Supposing that sanction had been accorded by the Secretary of State to this course, namely, that they should pass a general Act applying to their Presidency, it would then be for other Local Governments to consider whether it was desirable for them to follow suit. I may here add, in conclusion, that from my own point of view I look upon this little Bill as one of very great potential value. Throughout India a very large number of small branches are wanted to our great trunk lines, and the need of this is being constantly pressed upon us by local authorities—commercial, administrative and others—with great urgency. At the same time it is quite obvious that we cannot out of Imperial Funds construct such branches, or give guarantees to Companies to construct them. If such branches are to be constructed at all, the funds for guarantees must be found in some way totally distinct from those of the Imperial Government, in fact, from sources which lie to hand in the local and municipal revenues of India. At the same time it will be an exceedingly good test of the real necessity of any such branches that such Local Boards or Bodies should have to bear the burden of their construction; and I think we shall thereby obtain an additional safeguard that money will not be thoughtlessly thrown away. On the other hand, I may add that in the proceedings of these Boards I earnestly hope the interests of the raiyats will not be lost sight of, and that care will be taken, while providing branches in cases where they are really necessary, not to allow them to absorb funds which should more properly be distributed in some manner better calculated to

CENTL. PROS. CIVIL COURTS; KHOJÁ SUCCESSION. 483
1855.] [*Mr. Hope; Mr. Ilbert.*]

give the greatest amount of general benefit to all the contributors to the land-revenue, cesses and other sources from which those funds are raised."

The Motion was put and agreed to.

The Hon'ble MR. HOPE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

CENTRAL PROVINCES CIVIL COURTS BILL, 1855.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to amend the Law relating to Civil Courts in the Central Provinces be taken into consideration. He said :—

"I have fortunately very little to say on this Motion. The Bill to which the Motion relates is based upon a scheme which had been very carefully considered by the Chief Commissioner of the Central Provinces and his officers. The Bill itself was settled in personal consultation with the Chief Commissioner when he visited Simla a few months ago, and he has now informed us that, after referring again to his officers, he is of opinion that its provisions meet the requirements of the case. He has advised us to pass the Bill without alteration, and the Report of the Select Committee is framed in accordance with that advice."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill be passed.

The Motion was put and agreed to.

KHOJÁ SUCCESSION BILL, 1855.

The Hon'ble MR. ILBERT also moved that the Hon'ble Mr. Amír Ali be added to the Select Committee on the Bill to amend and define the law of Testamentary and Intestate Succession to Khojás. He said :—

"Mr. Amír Ali has already been kind enough to give us, on behalf of one of the Muhammadan Associations, some valuable suggestions with respect to this Bill, and I am glad to avail myself of his visit to Simla by asking him to assist in the further deliberations of the Select Committee on a measure which undoubtedly raises some very difficult and important questions."

The Motion was put and agreed to.

[*Mr. Ilbert.*] [2ND OCTOBER, 1885.]

CENTRAL PROVINCES GOVERNMENT WARDS BILL, 1885.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to make better provision for the Superintendence of Government Wards in the Central Provinces.

The Council adjourned to Thursday, the 8th October, 1885.

SIMLA;	}	D. FITZPATRICK,
<i>The 8th October, 1885.</i>		<i>Secretary to the Government of India, Legislative Department.</i>

Note.—The Meeting fixed for the 1st October, 1885, was subsequently postponed to the 2nd idem.

485-492 missing

*Abstract of the Proceedings of the Council of the Governor General of India,
assembled for the purpose of making Laws and Regulations under the
provisions of the Act of Parliament, 24 and 25 Vic., cap. 67.*

The Council met at the Viceregal Lodge, Simla, on Thursday, the 15th October,
1885.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.P., G.C.B.,
G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.
The Hon'ble Amír Alí.

LAND ACQUISITION (MINES) BILL, 1885.

The Hon'ble MR. HOPE moved that the Report of the Select Committee on the Bill to provide for cases in which Mines or Minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870, be taken into consideration. He said :—

“ On the occasion of moving for leave to introduce the Bill I gave so full an explanation of the objects which it was desired to attain that I think I need not trouble the Council with any further detailed remarks upon the subject. The only point which it is perhaps desirable to bring to the notice of the Council is that to the Bill, as first drafted, considerable objections on the part of owners of coal underlying contemplated railways in Bengal were found to exist. These coal-owners consequently submitted some representations to the Select Committee which have received most careful consideration. We found that in some instances the objections taken to the wording possessed considerable show of reason. We have modified the Bill in those and other particulars, and I am glad to say that we have now received from the Bengal Government, and from the coal-owners themselves, the statement that they are perfectly satisfied with the Bill as it now stands.

[*Mr. Hope; Mr. Ilbert; Sir A. Colvin.*] [15TH OCTOBER,

“Under these circumstances I feel no hesitation in recommending the Bill to the favourable consideration of the Council. Before, however, coming to the next Motion, I desire, with the permission of Your Excellency and the Council, due notice not having been given of it, to move a very small amendment in section 15. It is that in sub-section (2) of that section, after the words ‘persons interested in the land’ the words ‘or entitled under the Land Acquisition Act, 1870, to act for persons so interested’ be inserted. The object of this small amendment is to make it quite clear that minors or lunatics can give assent to the proceedings through their legal representatives.”

The Hon’ble MR. ILBERT said :—“It appears from the papers that we have received that all the persons interested in the mines affected by the measure have agreed not only that the Bill in its present form shall regulate their rights in future, but also that it shall be applied to pending proceedings. That I understand to be the effect of the communications just received by the Public Works Department. If that had not been the case, there would have been good reason for suspending the Bill until our arrival in Calcutta, but, as it appears to have been distinctly assented to by all the persons interested, I think we may now quite safely pass it into law.”

The Motion was put and agreed to.

The Hon’ble MR. HOPE then moved that in section 15 of the Bill, sub-section (2), after the words “persons interested in the land” the words “or entitled under the Land Acquisition Act, 1870, to act for persons so interested” be inserted.

The Motion was put and agreed to.

The Hon’ble MR. HOPE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

INDIAN SECURITIES BILL, 1885.

The Hon’ble Sir A. COLVIN moved that the Report of the Select Committee on the Bill to amend the law relating to Government Securities be taken into consideration. He said :—

“When this Bill was introduced, it was explained that, before and since the passing of the Contract Act, the practice of the Indian Public Debt

1885.]

[*Sir A. Colvix.*]

offices had been to treat the right of suing on and giving receipts for money payable under Government promissory notes as vesting in the survivor or survivors of two or more joint holders. But the law officers of the Government had recently given an opinion that, having regard to section 45 of the Contract Act, it was not safe to continue this practice. The Government of India therefore considered that legislation was desirable both for the purpose of confirming what had been done in the past, and for the purpose of laying down a convenient rule for the future. When, however, we came to undertake legislation, we found that, on the one hand, it was urged that any provision which might be contemplated in respect of Government securities should be generalised and extended to other classes of obligations besides those arising on such securities; and, on the other, that the rule of survivorship as applied to instruments of the description in question is one that does not fit in with the habits and ideas of certain classes of the Native population, and might, if extended to those classes as an absolutely binding rule, open a door to the perpetration of frauds. It was, therefore, proposed that we should legalise what had been done in the past, and leave the future to be dealt with administratively. It was suggested that it could be so arranged in the Loan Department of the Government that it should be in the option of persons, in whose favour securities are first issued or to whom they are subsequently transferred by endorsement, either to take them simply in their several names, that is to say, in favour, *e. g.*, of 'A, B and C,' without qualification, in which case the rule of the Contract Act would apply, or to take them under words giving a right of survivorship, as, *e. g.*, in favour of 'A, B and C, and the survivor or survivors of them,' in which case we are advised the rule of the Contract Act would be excluded and the rule of survivorship would apply. This, it was thought, would be likely to afford a more satisfactory solution of the difficulty as regards securities to be hereafter issued than any enactment establishing either the rule of survivorship or that of representation in a hard-and-fast manner, as it would leave it open to all concerned to adopt for themselves the rule best adapted to their requirements. To obviate mistakes or oversight, it was believed that a notice to the above effect might be enfaced on the security in such a manner as to ensure attention. When, however, the matter was referred to the Loan Department in Calcutta, and when the opinions of competent banking authority was taken on the subject, we found that there was considerable objection from their point of view on the ground that it would introduce, for a time at least, doubt and uncertainty in the case of Government securities; and we came to the conclusion that on the whole it would

[*Sir A. Colvin; Mr. Ilbert.*]

[15TH OCTOBER,

be better to legalise up to the 1st of April of next year the present practice, leaving to be settled during the winter the course which should be ultimately adopted; so that during that time we shall have an opportunity of deciding whether the provision which we now propose to introduce should apply only to Government securities, and, on the other hand, whether the administrative arrangement by which we desire to supplement it is open to such objection as practically to require us to adopt some other treatment."

The Hon'ble MR. ILBERT said:—"I entirely agree with my hon'ble colleague, Sir Auckland Colvin, as to the propriety of the course which the Select Committee have recommended for adoption. I had occasion to touch on the main question raised by the Bill in the course of some remarks which I made last January when the Bill to amend the Negotiable Instruments Act was passed into law. The Bank of Bengal had then suggested that the opportunity afforded by that Bill should be taken to declare section 45 of the Contract Act inapplicable to negotiable instruments. I said that I was not aware of any case in which that section had been held to be applicable to such instruments, and that, if the question were to be argued, I was disposed to think that the application of this section might be held to be sufficiently limited by the express saving of any usage or custom of trade and by the provisions of the law with respect to partners, trustees and executors. But however this might be, I thought that, if any amendment of the law in the direction suggested by the Bank of Bengal was necessary, it might be more appropriately embodied in a Bill for amending the Contract Act, since there might well be other cases besides those of negotiable instruments from which the applicability of this section ought to be excluded.

"The Indian Public Debt authorities have now brought up a similar suggestion, but of a somewhat more limited character, and in order to make clear what their proposals amount to, and what they would involve, I think I ought to explain as briefly as I can the existing state of the law as to the devolution of joint rights and liabilities.

"The old rule of the English Common Law was that, on the death of one or more joint tenants, the interest under the tenancy devolved on the survivor or survivors to the exclusion of the representatives of the deceased person; and this rule was applied not only to joint tenants of land and other forms of real property, but also to joint owners of goods and chattels, including that form of personal property which is technically known as a chose in

1885.]

[Mr. Ilbert.]

action, that is to say, a right enforceable through the Courts. But it was clear that the rule could not be applied to mercantile rights and interests without causing serious inconvenience and injustice, and consequently there was engrafted on it an exception which professed to be based on the law merchant. 'The wares, merchandise, debts or duties,' it was said, 'which joint merchants have, as joint merchants or partners, shall not survive, but shall go to the executors of the deceased, and this is *per legem mercatoriam* which is part of the laws of the realm for the advancement and continuance of commerce and trade, which is *pro bono publico*, for the rule is that *jus accrescendi inler mercatores pro beneficio commercii locum non habet.*' The Courts of Equity worked out and developed this exception, and formally established the principle that, even where the legal remedy for the recovery of property devolved exclusively on the survivor of two joint owners, he would be compelled in proper cases to account for the share of the deceased person to the representative of that person. The consequence is that, as the English law now stands, on the death of one of several joint creditors, the right to sue on the contract vests in the survivor or survivors, and, on the death of the last of two or more survivors, in his personal representative. But a person recovering money under this right of survivorship may be accountable for it to the representatives of the deceased person. Meanwhile, it was found that a rule which was unjust and inconvenient when applied to beneficial rights and interests was useful and convenient when applied to the rights and interests of a trustee. When one of several trustees dies you do not want his personal representatives to have anything to do with the trust-property; what you want is that the rights in respect of the property should vest in his surviving colleagues in the trust. Accordingly, it has become the practice that, when property is vested in two or more trustees, it is held by them as joint tenants subject to the rule of survivorship. The general result is eminently characteristic of English law. You have an old rule trimmed by judicial decisions into conformity with modern requirements, and adapted by legal ingenuity to purposes which were never contemplated when it first came into existence, neither the rule nor its qualifications being expressed in language adapted for use in a Code.

"This was the state of the law when the Indian Law Commissioners set to work to codify the law of contract for Indian purposes, and the course which they adopted was boldly to throw over the old English rule as to the survivorship of joint rights and to make that a rule which under the English law was the exception,—that is to say, to make the rule of representation the

[Mr. Ilbert.]

[15TH OCTOBER,

rule and the rule of survivorship the exception,—and they introduced into the Indian Contract Act two sections (42 and 45) which regulated the devolution of joint liabilities and of joint rights. Section 42 declared that—

‘When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise;’

whilst the other section in corresponding language declared that—

‘When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly;’

and by way of explanation the Law Commissioners state in their Report—

‘In regulating the devolution of rights and liabilities, we propose, in accordance with the rule of English Courts of Equity and of the Indian Code of Civil Procedure, that joint liabilities and rights shall, after the death of one of the persons liable or entitled, go to his representative jointly with the survivor, and after the death of the survivor to the representatives of both jointly.’

“So far as we have been able to ascertain by examination of the papers, this proposal was accepted without any criticism whatever.

“Now, what happened after the passing of the Contract Act was what, I fear, has happened in the case of a good many enactments. People went on, just as they had before, in happy unconsciousness of any change in the law, until they were suddenly pulled up by some authoritative legal opinion or judicial decision which made them aware that their proceedings were altogether irregular and illegal. Thus, the Indian Public Debt officers made no alteration either in their rules or in their practice, and it is only a very short time ago that they were advised that their existing practice was not safe, and that in order to make themselves safe they must, after paying off the security held by the joint owners, obtain a receipt, not only from the survivor or survivors, but from the legal personal representatives of the deceased holder. Having been so advised, they come to us in a great hurry, and beg us to alter the law so as to make it conformable to their practice. But in making this request they raised some extremely difficult questions. For what one

1885.]

[Mr. Ilbert.]

cannot help asking is whether, if the law is wrong for Government securities, it is right for other forms of contract; and I was not at all surprised to see that one of the criticisms of the Bill in the papers we have received runs as follows:—

‘What is proposed is that there shall be one law for Government securities and a different law for all other securities and contracts—one principle to regulate the rights of Government and its creditors and a different principle to regulate the rights of creditors among themselves.’

‘Very possibly this exceptional treatment is justifiable, but *prima facie* there is something in the objection to it, and one cannot help doubting its propriety when one finds that several of those who are in favour of altering the law would alter it more extensively than was proposed by the Public Debt authorities and by the Bill as originally drawn. In consequence of suggestions to the effect that a more general amendment of the law should be attempted, I tried my hand at an amendment of section 45 of the Contract Act, but I found that the task was very far from easy, and that it was extremely hard to frame a proviso which would not be either too wide or too narrow to suit the requirements of the case. Then, again, among the different legal authorities whom I consulted privately as to the best mode of dealing with the section,—and I may say that I consulted very eminent legal authorities, both in England and in this country,—I find that there is great difference of opinion. Some are in favour of repealing the section altogether; others would keep it, but would qualify it by exceptions more or less wide; whilst others would leave it alone, bringing the practice as far as possible into conformity with the law. Under these circumstances, whatever may be done hereafter, I think there can be no doubt as to what should be done now. You cannot alter past contracts, and I think that the Public Debt authorities have made out a very strong case for ratifying their past practice, and for doing so as soon as possible. I think also that we may with propriety extend this ratification to securities issued during the next four or five months, before the expiration of which time it would be practically impossible to pass a law of a more general character. So much as regards the past; but as regards the future there are two courses open to us: we may either adapt the law to the practice or adapt the practice to the law. The Bank authorities and the Public Debt authorities are naturally in favour of the former course, as giving them the least trouble, but I am by no means satisfied that they cannot by some such expedient as that indicated in the Report of the Select Committee, without inconvenience to themselves and the public, so adjust their practice

as to bring it into conformity with the law. If that can be done, no amendment of the law is necessary. I may be wrong in thinking that this is practicable, but before coming to a final conclusion I should like to hear what lawyers and men of business have to say on the subject in Calcutta. It is quite obvious that if the alteration of the law is to be extended beyond the single case of Government securities,—and it apparently should in order to place the law in a satisfactory state,—the form which the amendment must assume will require very careful consideration. Accordingly I am in favour of confining the operation of section 3 of the Bill to the past and to the immediate future, leaving the two questions whether it should be applied to all Government securities hereafter issued, and whether it should be extended to other forms of contract besides Government securities, to be decided hereafter.”

The Motion was put and agreed to.

The Hon'ble SIR A. COLVIN moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

MIRZAPUR STONE MAHAL BILL, 1885.

The Hon'ble MR. ILBERT introduced the Bill to declare and amend the law relating to the Stone Mahal in the District of Mirzapur in the North-Western Provinces, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley, the Hon'ble Mr. Quinton and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *North-Western Provinces and Oudh Government Gazette* in English, and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

MADRAS CIVIL COURTS ACT, 1873, AMENDMENT BILL, 1885.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to amend the Madras Civil Courts Act, 1873.

1885.]

[*Mr. Amir Ali.*]

MAIMON BILL, 1885.

The Hon'ble MR. AMIR ALI moved for leave to introduce a Bill rendering it permissive to the members of the Maimon community to declare themselves subject to Muhammadan Law. He said :—

“ I will not detain the Council long with the few observations which I have to offer, in order to explain the circumstances under which this Motion is brought forward, and the necessity for the proposed enactment.

“ Your Excellency and the hon'ble members are aware that at present the Cutchee Maimons are, in matters relating to succession, etc., governed for the most part by customs of a Hindu origin. In March last a memorial on behalf of the Maimons of Calcutta was presented through me to Your Excellency in Council, praying that a law might be passed ' declaring that in future all disputes among the members of the Maimon community should be settled according to Muhammadan law, as laid down by Imám Abu Hanífa, and not according to Hindu customs conflicting with the Koran and the traditions of the Prophet.' This memorial, briefly but clearly, set forth the grounds upon which the prayer was made for the interference of the legislature. It was referred by the Government of India for the opinion of the Bombay Government, which has now been submitted to Your Excellency, and to which I shall shortly refer. About the same time a memorial was presented to the Bombay Government for submission to Your Excellency in Council by various Maimons of Bombay, which is also now before the Supreme Government. It was the outcome of a great movement among the Cutchee Maimons of the Bombay Presidency, and was adopted at a meeting numerous and influentially attended, which seemed to express the earnest desire of a large body of people to escape from the thraldom which in their view was forced upon them by the British Courts of Justice.

“ The history of the movement now set on foot by these Cutchee Maimons is interesting, and requires some mention in order to make their present action intelligible. The Maimons do not constitute a sect; they do not hold any distinctive doctrines, like the Khojás, differentiating them from the general body of Musalmáns or from the principal recognized sects. They are strict Muhammadans, belonging to the Hanafi school of law, as they themselves mention in the memorial; they observe all the religious ordinances which are laid down in the Koran, and the traditions for the guidance of the orthodox Musalmáns. They regularly say their prayers, pay their *zakat*, perform the pilgrimage to Mecca, and keep the fast during the month of Ramzáñ.

[*Mr. Amir Ali.*]

[15TH OCTOBER,

“The origin of the Maimons is to some extent involved in obscurity; they themselves trace their origin to settlers in Cutch and Kattywar from the coast of Oman; but this seems to me only a half truth. It appears that, really speaking, they are the descendants of proselytes to Muhammadanism made by Arab missionaries from the coast of Oman and Hadramaut. These converts, as is usually the case, retained after their conversion a considerable portion of their original Hindu customs. But with the advance of time, and, as they themselves acknowledge, with a growing acquaintance with the tenets of Islam, these customs have gradually relaxed their hold. And now a large body of the community regard them with actual abhorrence.

“I may mention here that the Maimon community is divided into two sections—the Halai Maimons and the Cutchee Maimons. The former trace their origin to Kattywar, the latter to Cutch. The Halai Maimons have long since emancipated themselves from the customs which conflicted with Muhammadanism, and the decision which has had the effect of crystalizing the Hindu customs among the Cutchee Maimons has no reference to them; the learned Chief Justice who decided the case to which I am about to refer expressly excluded the Halais from the scope of his judgment. In the year 1847, a suit was brought in the Bombay Supreme Court, by a Maimon female, for the distribution of certain ancestral property in accordance with the Muhammadan law: the defence was that, by the customs existing among the Cutchee Maimons, females were excluded from inheritance. That and another case, which arose at the same time among the Khojás, were tried before Sir Erskine Perry, then Chief Justice of Bombay, and he held that the Muhammadan law did not obtain with reference to either of these communities, and that they were to be governed by especial customs prevailing among them. Since then every question which has arisen among the Maimons has been decided in accordance with the precedent laid down by Sir Erskine Perry. In each particular case the customs have to be ascertained from oral testimony,—a process always attended with uncertainty and, in this country, with great risk of failure, and invariably entailing heavy costs on the litigant parties. One may say, without being charged with presumption, that Chief Justice Perry’s decision was founded upon a misconception. It treated the subject from all points of view,—the Roman, the Frankish, the English,—all excepting the one from which it ought really to have been looked at, that of the Muhammadan law. There can be no doubt that it created considerable excitement at the time among the Cutchee Maimons, and though, as the learned Judge anticipated, no appeal was preferred to the Privy Council by

1885.]

[*Mr. Amir Ali.*]

the parties affected, owing probably to want of means, every other measure was adopted for the purpose of expressing the disapproval of the Maimon community. However, owing, it is said, to an unacquaintance on the part of the Maimons generally with the proper mode in which they should apply for redress, the matter remained in abeyance until a few years ago, when the strong movement, of which the present memorials are the outcome, set in among the community to invoke the assistance of the legislature. That a large body of Maimons—if not the bulk—are anxious for the interference of the legislature is evidenced by the fact that those resident in Calcutta have unanimously declared themselves in favour of the change. The meeting at Bombay in the Jakariah Mosque was attended by almost all the leaders, or Sethias, of the Cutchee Maimon community, and throughout the proceedings not a dissentient voice was raised against the demands of the memorialists. Still it is clear there are some Maimons who are unwilling to abandon their ancient customs. And it is with reference to the wishes of these men that the Bombay Government has recommended the introduction of a permissive enactment, and I have thought it right to put the measure in that form. That the appeal to the legislature by those Maimons who are anxious for emancipation is perfectly legitimate and reasonable will be apparent when it is remembered that with the Muhammadans their religion is their law, and their law is their religion. The Cutchee Maimons urge with reason that their brethren, the Halai Maimons, who have abandoned the Hindu customs as completely as their ancestors abandoned the Hindu faith, do not labour under any such disadvantages as they are subject to. Why then should they, as good Muhammadans as the Halais or any other Muhammadans, be tied for ever to pagan institutions? The Maimon memorialists have put their case very strongly in the following terms:—

‘ Your petitioners venture to characterise this state of things, which has been afflicting their community ever since Sir Erskine Perry’s aforesaid judgment, as absolutely intolerable. They deem it a great hardship that they should be Musalmáns and yet be deprived of the benefit of the Muhammadan laws. They deem it a still greater hardship that the Hindu law, which is absolutely unsuitable to their circumstances, but which may at any moment be extended to them, should be applied to them even in matters of succession and inheritance, for which special provisions and laws have been laid down by the Muhammadan religion. They deem it an intolerable grievance that their rights in regard to all their worldly possessions, either in their own life or after their death, should be determined haphazard according to the credit any judge may choose to attach to any witness in favour of, or against, a custom in a suit in which the community at large has no voice whatsoever.

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[*Mr. Amir Ali.*]

[15TH OCTOBER,

'The reasonableness of your petitioners' request will be apparent when it is borne in mind that even a Hindu can rid himself of his own laws and enjoy the benefit of the Muhammadan laws if he *bonâ fide* adopts the Muhammadan faith. What, however, a Hindu, Pársí, Christian or Jew may do without the least difficulty or objection, your petitioners are now absolutely debarred from doing according to the present decisions of the High Court. Is it not absurd, your petitioners venture to ask, that if they were pure Hindus they could, by the mere fact of becoming Musalmáns, at once, without interference of the legislature, have the full benefit of the Muhammadan law; but because they are already Musalmáns they cannot by any act of their own, either individually or collectively, without undergoing enormous trouble, delay and expense, divest themselves of the Hindu laws or have the benefit of the laws enjoyed by their other co-religionists.'

"The Hon'ble Budruddin Tyabjee, who is not given to the use of exaggerated language, in his speech at the Jakariah Mosque declared that nothing could be more scandalous than the present state of the law as applied to the Maimons, and stated that the relief prayed for by the memorialists was simply just and fair, and that they were as a matter of right entitled to enjoy full freedom like other Muhammadans, in the due observance of their religion, and the benefits of the Muhammadan law. My Lord, in India the legislature has preserved intact the laws of the Musalmáns in all matters relating to inheritance, disposition of property and status. The Muhammadan law is interwoven with the moral and social life of the Musalmáns. Why then, argue the memorialists, should a body of Musalmáns be subjected to customs in direct conflict with their religion? The Judicial Committee of the Privy Council, in the case of *Jowala Buksh v. Dhurum Singh*, made use of the following expressions:—

'The written law of India has prescribed broadly that in questions of succession and inheritance the Hindu law is to be applied to Hindus, and the Muhammadan law to Muhammadans; and in the judgment delivered by Lord Kingsdown in *Abraham v. Abraham*, it is said that "this rule must be understood to refer to Hindus and Muhammadans, not by birth merely but by religion also".'

"Though the Judicial Committee abstained from expressing a decided view in that case whether it was competent for a family converted from the Hindu to the Muhammadan faith to retain for several generations Hindu usages and customs, yet the tendency of their view is unmistakeable. In order to show that the Maimon memorialists are not wrong in the view they take of their present anomalous position, I will quote a passage from the judgment of Mr. Justice O'Kinealy in a recent case arising among Muham-

1885.]

[Mr. Amir Ali.]

madans in which also a custom *dehors* the Muhammadan law was put forward:—

‘The Muhammadan law of inheritance is based on the Surá Nissa in the Koran, which was revealed in order to abrogate the customs of the Arabs, and on the Hadis or traditions of the Prophet. According to the principles of the Muhammadan law, any attempt to repudiate the law of the Koran would amount to a declaration of infidelity such as would render the individual concerned liable to civil punishment by the Kází in this world, and to eternal punishment in the next. No custom opposed to the ordinary law of inheritance, which was created to destroy custom, would be recognised by the doctors of the Muhammadan law, and in our opinion it follows as a natural consequence that no such custom should be recognised by our Courts, which are bound by express enactment to administer Muhammadan law in questions of inheritance among Muhammadans.’

“Besides these arguments, which may be urged on behalf of the Maimon memorialists in support of their present appeal, there is one consideration which brings this movement, *prima facie* of sectional interest, to use the words of a writer in a Bombay journal, ‘within the wider range of public sympathy.’ The Hindu customs prevailing among the Cutchee Maimons have had the effect of excluding the widows and unmarried women of that community from succession to the estates of their parents and husbands, and from the advantages resulting from the beneficent policy of the Muhammadan law towards females. The Maimon widow, so long as she is under the Hindu customary law, receives a bare maintenance, which she forfeits on remarriage. The first result of a law such as the memorialists ask for would be to improve the status of women. One of the objections which I have to the Khojá Bill, now pending in your Excellency’s Council, is that it will have the effect of stereotyping those customs which press so heavily upon women; but whatever may be the reason for introducing such provisions in the Khojá Bill, there is no reason why a large body of people who are urgently asking to be released from such customs should not have their prayer granted, the primary result of which concession would be a decided improvement in the social and legal position of their widows and unmarried women, and will be regarded by the whole of Musalmán India as a boon conferred on their co-religionists.

“The Bill which I ask leave to introduce is absolutely unobjectionable from every point of view. It only proposes to give facilities to those Maimons who wish henceforth to be governed by Muhammadan law to record a declaration to that effect. It imposes no restriction on the voluntary action of any individual; it interferes in no way with those members of the community who desire to continue subject to their ancient customs; it only provides an easy

Mr. Ilbert; Mr. Amir Ali; Sir Steuart Bayley. [15TH OCTOBER,

mode of escape for those who are legitimately anxious to free themselves from what they regard as the bondage of heathenism."

The Hon'ble MR. ILBERT said:—"I am very glad to hear from my hon'ble friend, Mr. Amir Ali, that the measure he is asking leave to introduce is likely to satisfy those members of the Maimon community who desire to be placed under the ordinary Muhammadan law. As I understand it, his Bill is of a purely permissive character, and, if so, it is in entire accordance with the principles which the Government of India desire to apply in similar cases. It has long been recognised that the time-honoured division of Natives of this country into Hindus or Gentus and Muhammadans is not an exhaustive division for legal purposes, and that there are numerous classes who, whilst professing the Muhammadan faith, have retained for certain purposes and to a certain extent Hindu or non-Muhammadan customs or usages with respect to succession and inheritance. If evidence on this point were required, it is to be found in abundance in the interesting compilations of Punjab customs prepared by my friend Mr. Tupper and others. Now, we do not desire to put the slightest pressure on any members of these communities to renounce or abandon their peculiar customs or usages, but we do wish to give them every reasonable facility for placing themselves under the ordinary Muhammadan law in all respects if they desire to do so; and that I understand to be the object of the present Bill with respect to the Maimon community."

The Motion was put and agreed to.

The Hon'ble MR. AMIR ALI said that, with His Excellency's permission, he would ask leave to introduce the Bill, as it seemed doubtful whether there would be another meeting of the Council in Simla, and especially as he understood that his hon'ble friend Mr. Ilbert was about to visit Bombay, where he would have an opportunity of consulting with the members of the Maimon community on the spot.

Leave was granted.

The Hon'ble Mr. AMIR ALI then introduced the Bill.

BENGAL TENANCY ACT, 1885, POSTPONEMENT BILL.

The Hon'ble SIR STEUART BAYLEY moved for leave to introduce a Bill to postpone for a limited time the operation of certain provisions of the Bengal Tenancy Act, 1885. He said:—

"In making the Motion that stands in my name I have to explain to the Council how it is that I was able to give them only such very short notice of it, and also what is the urgency of the case.

1885.]

[*Sir Stewart Bayley.*]

“The urgency arises in this way. Several provisions of the Bengal Tenancy Act can only be brought into operation under rules to be framed by the Bengal Government or by the High Court. But section 190 of the Act prescribes that such rules shall be published in a draft form for at least a month, and only after that period shall they be taken into consideration, and be notified so as to have the force of law.

“Now, we are advised that the publication of draft rules, although it can be made by executive authority, will not have effect for the purposes of this section unless made after the law itself comes into force. The Government of Bengal have decided, with the consent of His Excellency the Governor General in Council, that the law shall come into force on the 1st November, so that the month during which the draft rules have to be published can only run from that date; and as a matter of fact, owing to the vacation of the High Court, the draft rules to be framed by that authority cannot well be published till late in November. It follows that, on whatever date the law comes into force, whether that date be the 1st November or any subsequent date, there must always be an interval, which in practice cannot be much less than six weeks, between the date on which the law comes into force and the date on which the rules can be legally notified as binding.

“This is an inconvenience which can be avoided in future legislation of the same kind by prescribing that the draft rules may be published before the Act comes into force, and I regret that a provision of this kind was not inserted in the Tenancy Act.

“In these circumstances we consulted the Bengal Government as to the best means of meeting the difficulty, and asked them, should they consider legislation necessary, to consult the British Indian Association, as representing the landlords, on the subject.

“Unfortunately the Lieutenant-Governor was on tour in the floated districts, and we therefore only received his final reply the day before yesterday. He explains that he was unable, owing to this cause and to the absence of many of the leading representatives of the British Indian Association during the Doorga Pooja, to consult them with any hope of getting an answer before the 1st of November, and he therefore decided to recommend that a short Act should be passed, which should continue in force the provisions of the existing law relating to distraint and deposit—the only two points on which the temporary absence of legal rules is likely to cause difficulty—till such time as the rules themselves are officially notified.

[*Sir Steuart Bayley; The President.*] [15TH OCTOBER,

"There appears no serious objection to this course being followed, but in view of the fact that the Act comes into force on the 1st November, and that it is necessary for the parties interested to have as much notice as possible, with a view to making their own arrangements, it was clearly necessary to bring in the Bill on the earliest opportunity and pass it through without the delay attending the usual process of legislation.

"Coming now to the scope of the Bill, it will be observed that it merely keeps in force the provisions of the existing law on these two subjects pending the legal notification of the rules, which we may be sure will be effected by the 1st February, and that it involves nothing but a temporary suspension of the particular sections of the new law relating to distraint or deposit.

"Without this there would be no power for landlords to distrain for rent, and there might be a difficulty about their receiving such rents as their raiyats may wish to deposit in Court; and, in order to obviate any inconvenience which might arise from the temporary absence of such power, it devolves upon me to ask the Council to carry into effect the suggestions of the Lieutenant-Governor of Bengal."

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also introduced the Bill.

The Hon'ble SIR STEUART BAYLEY having applied to His Excellency the President to suspend the Rules for the conduct of Business,

THE PRESIDENT declared the Rules suspended.

The Hon'ble SIR STEUART BAYLEY moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY then moved that the Bill be passed.

The Motion was put and agreed to.

After some preliminary observations in regard to the next meeting of Council, His Excellency THE PRESIDENT spoke as follows:—

"As, however, in any case I shall be precluded from being present should such a Council be held, I desire to take this opportunity, on behalf of my colleagues and of myself, to express the very great regret which we all experience at the fact of this being the last occasion on which we shall have the co-operation and assistance of our hon'ble colleague Mr. Amir Ali.

1885.]

[*The President.*]

“Every one of us has fully appreciated not only the great ability, conscientious industry, good sense and large and thorough knowledge of affairs which Mr. Amir Ali has brought to bear upon our deliberations, but we have also had occasion to admire the unfailing courtesy and good temper with which he has discharged his important duties. I may add for myself that he never speaks without exciting my personal envy at the eloquence and facility with which he uses the English language.

“In conclusion, I can assure him that he carries with him the personal respect and regard of us all, and that we are united in our deep regret at the loss of his valuable assistance.”

The Council adjourned to Thursday, the 22nd October, 1885.

D. FITZPATRICK,
*Secretary to the Government of India,
Legislative Department.*

SIMLA;
The 22nd October, 1885. }

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at the Viceregal Lodge, Simla, on Thursday, the 22nd October, 1885.

PRESENT :

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E., *presiding*.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

MADRAS CIVIL COURTS ACT, 1873, AMENDMENT BILL, 1885.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to amend the Madras Civil Courts Act, 1873, be taken into consideration. He said :—

“ This is a very small amending Bill, which was prepared in order to give effect to some suggestions of the Madras Government and the High Court. By the Bill as originally introduced the Local Government was empowered to confer Small Cause Court jurisdiction on District Munsifs up to a pecuniary limit of Rs. 500. Considerable objection has been taken to this proposal, and the Select Committee have, on the recommendation of the Madras Government, reduced this pecuniary limit to Rs. 200, and they have further proposed that it shall not be extended beyond the existing limit of Rs. 50 except on the recommendation of the High Court.

“ The only other alteration in the Bill to which I need direct the attention of the Council is the introduction of a provision which places the power of suspending and removing ministerial officers of subordinate Courts under the general control of the High Court. Under the existing law this power is vested absolutely and finally in the Judges of the subordinate Courts ; and the Select Committee agree with the Madras Government in thinking that, in order to guard against the possibility of the power being exercised in an arbitrary manner, oppor-

tunity should be given to the officers of those Courts to appeal against the decision of the Judges of their Courts to the High Court. Accordingly we have added words to the existing Act which will provide this opportunity.

“ The only other amendments of the Bill are amendments of a purely technical character, and do not call for any explanation.”

The Motion was put and agreed to.

The Hon'ble Mr. Ilbert also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

MAIMON BILL, 1885.

The Hon'ble MR. ILBERT, on behalf of the Hon'ble Mr. Amir Ali, also moved that the Bill rendering it permissive to the members of the Maimon Community to declare themselves subject to Muhammadan Law and Statement of Objects and Reasons be published in the local official Gazettes in English, and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

TRAMWAYS BILL, 1885.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to facilitate the construction and to regulate the working of Tramways. He said :—

“ The introduction of this Bill has been made necessary by the projected construction of tramways in parts of India beyond the reach of the local legislatures. In 1883 a special Act was passed by this Council to authorise the making and to regulate the working of tramways in Rangoon. Since then applications have been made to the Government of India to sanction the construction of tramways at Lahore and Amritsar, and there is reason to believe that similar applications will be made to us with respect to other large and populous towns. It is obviously desirable to relieve the Legislative Department from the necessity of preparing, and the Council from the necessity of passing, numerous special Acts of this character, and to lay down in general terms the principles by which the construction and working of these tramways should be regulated. Accordingly, a general Bill has been prepared, which enables Local Governments to make orders authorising the construction of tramways, which prescribes the conditions on which those orders may be made, and which regulates, in general terms, the mode in which tramways are to be worked and maintained when authorised.

1885.]

[Mr. Ilbert.]

“ The Bill is drawn on the lines of the English Tramways Act of 1870 and of the Provisional Orders and Rules made by the Board of Trade under that Statute. It extends, in the first instance, only to those parts of India which have no local legislatures of their own, but it enables the Local Governments of other parts of India to extend the Bill to their Provinces by notification in the Gazette.

“ I ought to add that the Bill contains a provision enabling the Local Governments, with the consent of the owner and the local authorities, to extend any part of the Act, with or without modification, to tramways already in existence.

“ It might, perhaps, be thought, on glancing at the Bill, that it goes somewhat too much into details, but, if the most elaborate clause of the measure is carefully examined, it will be found that it merely indicates the points for which both English and Indian experience has shown that it is usually desirable to make provision, and thus it assists, instead of hampering, Local Governments in dealing with the various circumstances which arise in different cases and in different localities.

“ I do not propose to carry the Bill to-day beyond the stage of introduction, but, in order to give the Local Governments the earliest possible opportunity of making suggestions to the Select Committee, I propose to move that the Bill be published at this stage in the local Gazettes.”

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also introduced the Bill.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English, and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned *sine die*.

D. FITZPATRICK,
Secretary to the Govt. of India,
Legislative Department.

SIMLA ;
The 27th October, 1885.

*Abstract of the Proceedings of the Council of the Governor General of India,
assembled for the purpose of making Laws and Regulations under the
provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at Government House on Friday, the 18th December, 1885.

PRESENT.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.,

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

The Hon'ble H. J. Reynolds, C.S.I.

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

The Hon'ble Peári Mohan Mukerji.

The Hon'ble H. St. A. Goodrich.

The Hon'ble R. Steel.

ACT XXXVI OF 1858 AMENDMENT BILL, 1885.

The Hon'ble SIR STEUART BAYLEY moved for leave to introduce a Bill to amend Act XXXVI of 1858 (*An Act relating to Lunatic Asylums*). He said that this Act gave power to various authorities to deal with lunatics and to send them when necessary to lunatic asylums. But it limited the power to such asylums as might be within the same Province or Presidency or under the jurisdiction of the same Inspector General as the locality from which the lunatic was sent. A case had arisen in Coorg in which it was expedient to act under the authority given by this law, but Coorg was a fortunate Province which had no lunatic asylum, and there were some other minor provinces, such as Ajmer, which were so far in a similar condition. Under such circumstances it would be obvious that there was no lunatic asylum to which the local authorities could send the lunatic if necessary. The Bill which he had the honour to ask leave to introduce was intended to remove this defect in the law, and to give the necessary power by enabling the Governor General in Council to appoint asylums outside the limits of the Province to which non-criminal lunatics might under such circumstances be sent.

The Motion was put and agreed to.

[*Mr. Ilbert.*],

[18TH DECEMBER,

INDIAN TRAMWAYS BILL, 1885.

The Hon'ble MR. ILBERT moved that the Bill to facilitate the construction and to regulate the working of Tramways be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley, the Hon'ble Messrs. Hope, Goodrich and Steel, the Hon'ble Rao Saheb Vishvanath Narayan Mandlik and the Mover.

He said that he had nothing to add to what he said when obtaining leave to introduce the Bill. It was one of a general and permissive character, intended primarily for those Provinces which had not Legislative Councils of their own, but also capable of being specially applied to such Provinces as Lower Bengal.

The Motion was put and agreed to.

PROVINCIAL SMALL CAUSE COURTS BILL, 1885.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to consolidate and amend the law relating to Courts of Small Causes established beyond the Presidency-towns. He said that the Courts of Small Causes outside the Presidency towns were now regulated by the Act of 1865, which declared that, subject to certain provisos, suits cognizable by those Courts should be "claims for money due on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage or demand does not exceed in amount or value the sum of Rs. 500, whether on balance of account or otherwise."

This enumeration was of considerable importance with reference to the law of appeals, because the Code of Civil Procedure provided that no second appeal should lie in any suit of a nature cognizable in a Small Cause Court when the amount or subject-matter of the original suit did not exceed Rs. 500. But the meaning of the language used in the Act of 1865 was far from clear, and there had been several conflicting decisions on its construction; so that the question whether a particular class of suits were or were not suits cognizable by Courts of Small Causes was open to a good deal of doubt. The chief object of the Bill was to remove such doubts by defining more precisely the jurisdiction of Small Cause Courts, and it proposed to do so in the same manner as in the Act recently passed for regulating the Small Cause Courts in the Presidency-towns; that was to say, by enacting that the jurisdiction of the Court should extend to all suits of a civil nature with certain specified exceptions; in other words, by enumerating the matters excluded from the jurisdiction of

1885.]

[*Mr. Ilbert.*]

the Court, instead of enumerating the matters *included* under that jurisdiction. But at the same time, as parts of the Act of 1865 had been repealed and other portions had become obsolete or were of doubtful construction, it was proposed to repeal the Act and re-enact it in an amended form. The numerous decisions which had been given on the sections of the Act had been carefully examined, and he believed the effect of the Bill would be to clear away a vast mass of case-law.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also introduced the Bill.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble MR. ILBERT also moved that the Hon'ble Mr. Evans be added to the Select Committee on the Bill to amend and define the law of Testamentary and Intestate Succession to Khojas.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Hon'ble Mr. Steel and the Hon'ble Mr. Peari Mohan Mukerji be added to the Select Committee on the Bill to provide for the voluntary Registration of certain Births and Deaths, for the establishment of General Registry Offices for keeping Registers of certain Births, Deaths and Marriages, and for certain other purposes.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Hon'ble Mr. Evans be added to the Select Committee on the Bill to amend section 265 of the Indian Contract Act, 1872.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Hon'ble Messrs. Quinton, Goodrich and Steel be added to the Select Committee on the Bill to amend the Petroleum Act, 1851.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Hon'ble Messrs. Evans and Steel and the Hon'ble Rao Saheb Vishvanath Narayan Mandlik be added to the Select Committee on the Bill to amend the Indian Registration Act, 1877.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Hon'ble Mr. Evans and the Hon'ble Peari Mohan Mukerji be added to the Select Committee on the Bill to amend the Code of Criminal Procedure, 1882, the Bombay District Police Act, 1867, the Indian Penal Code and the Prisoners' Act, 1871.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 23rd December, 1885.

S. HARVEY JAMES,

FORT WILLIAM ;
The 21st December, 1885. }

*Offg. Secretary to the Government of India,
Legislative Department.*

*Abstract of the Proceedings of the Council of the Governor General of India,
assembled for the purpose of making Laws and Regulations under the pro-
visions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at Government House on Wednesday, the 23rd December,
1885.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B.,
G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

The Hon'ble H. J. Reynolds, C.S.I.

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

The Hon'ble Peári Mohan Mukerji.

The Hon'ble H. St. A. Goodrich.

The Hon'ble R. Steel.

PROVINCIAL SMALL CAUSE COURTS BILL, 1885.

The Hon'ble MR. ILBERT moved that the Bill to consolidate and amend the law relating to Courts of Small Causes established beyond the Presidency-towns be referred to a Select Committee consisting of the Hon'ble Sir S. C. Bayley, the Hon'ble Messrs. Hunter and Quinton, the Hon'ble Peári Mohan Mukerji, the Hon'ble Rao Saheb Vishvanath Narayan Mandlik and the Mover.

The Hon'ble PEÁRI MOHAN MUKERJI said:—"I fully recognise the necessity which has arisen by the progress of legislation during the last twenty years of amending and consolidating the law relating to Small Cause Courts beyond the limits of Presidency-towns, but it appears to me that if the primary object of the Bill be, as it is stated to be, to remove doubts engendered by conflicting judicial rulings as to the class of suits cognizable by Small Cause Courts, that object will be far from realised by the changes in the existing law which the Bill proposes to make. At present the jurisdiction of Small Cause Courts is confined to four or five classes of suits, but the Bill proposes to extend it to all suits of a civil nature with thirty-eight specified

[*Bábi P. M. Mukerji; Mr. Ilbert.*] [23RD DECEMBER,

exceptions. What strikes me is that if the meaning of four or five phrases has given rise to a wide divergence of judicial interpretation, how much greater is likely to be the confusion if thirty-eight different exceptions are made subjects for judicial construction? And then it is impossible to contend that these thirty-eight exceptions afford an exhaustive list of the classes of suits which it is desirable should be excluded from the jurisdiction of Small Cause Courts. The fact that the exceptions mentioned in the Presidency Small Cause Courts Act, 1882, are only twenty-three in number and those in the present Bill are thirty-eight shows clearly that the Act of 1882 cannot be taken as a safe precedent and guide, and that it is an extremely difficult task to enumerate all classes of suits of a civil nature. I think the best way to amend the Act by the light of the judicial interpretations would be to incorporate them as explanations or illustrations of the section relating to jurisdiction. It is a suggestion which I venture to hope will receive due consideration by the Select Committee."

The Hon'ble MR. ILBERT said:—"The hon'ble member is quite right in describing the object for which this Bill has been introduced and the mode by which it is proposed to attain that object. The object of the Bill is to remove doubts which have arisen in consequence of conflicting judicial decisions on the construction of the section of the existing Act which defines the jurisdiction of Small Cause Courts in the Mufassal. The mode in which it is proposed to attain that object is by specifying not the matters which are included in but the matters which are excluded from their jurisdiction. I understand the hon'ble member to suggest that the object of the Bill will be better attained not by the process adopted in the Bill but by supplementing the existing law, where necessary, with illustrations or explanations. That is a matter which will very properly fall within the province of the Select Committee, and no doubt due weight will be given to the suggestion which he has made."

The Motion was put and agreed to.

LAHORE TRAMWAYS BILL, 1885.

The Hon'ble MR. ILBERT presented the report of the Select Committee on the Bill to authorize the making, and to regulate the working, of Street Tramways in Lahore.

ACT XXXVI OF 1858 AMENDMENT.

521

1885.]

[*Sir Steuart Bayley.*]

ACT XXXVI OF 1858 AMENDMENT BILL, 1885.

The Hon'ble SIR STEUART BAYLEY introduced the Bill to amend Act XXXVI of 1858 (*an Act relating to Lunatic Asylums*), and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Ilbert and Quinton and the Mover.

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Saturday, the 2nd January, 1886.

S. HARVEY JAMES,

FORT WILLIAM; }
The 30th December, 1885. }

*Offg. Secretary to the Government of India,
Legislative Department.*